TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 459.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. XI OF TESTIMONY (PAGES 5981 TO 6305, INCLUSIVE).

FILED JULY 30, 1906.

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No. 1079

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. XI

Pages 5281 to 5806, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 401 Sansome St., S. F.

(Testimony of R. M. Cobban.)

Q. Well, was there a single case of any entryman or entrywoman who is named in the bill of complaint, was located under any different circumstances?

A. Oh, yes.

Q. Well, I mean if so—I will call your attention to it later. I mean any one that you had anything to do with. Was it on the same basis that you were to receive a hundred dollars for locating them, and take a mortgage?

A. No, sir, there were some that went through that themselves, but I assisted them all the same, all that I could, without the payment of a hundred dollars.

Q. Well, can you now state as to whether there was a single one of the entrymen or entrywomen that are named in the bill of complaint, that did in fact give you a mortgage? A. No, I think not.

Q. Well, you know that there was not one that did, don't you? A. I think there were none.

Q. And so, in any case where there was a loan made, it was made without a mortgage security or note of any kind.

By Mr. BICKFORD.—The witness has already testified to that, and we object to it.

A. Well, I wish to say that there were notes given to me in some instances for the money that I had advanced; quite a number of instances. I was in the market at that time to purchase timber, and I was in a position to offer these people all that the timber was worth,

(Testimony of R. M. Cobban.)

and most of them considered that the offer that I made them was a fair offer, and so accepted it.

Q. And you wanted the land, did you not, rather than the mortgage?

A. I was willing to buy it at the price I offered them. I was in the market to purchase timber.

Q. I call your attention next to the entry that appears on page 882 of the record, August the 9th, 1899, of Charles C. Snyder, who, "Made timber and stone sworn statement No. 26, for lots 1, 2 and 3, in section 2, township 15 north, of range 15 west." Did you know Mr. Snyder?

A. I do, yes, sir; I know him.

Q. Who was he—who is he?

A. Charles C. Snyder was a laborer around Missoula, working at farm work generally.

Q. Working at what?

A. At farm work generally.

Q. Is he living there now?

A. I believe he is not.

Q. Where is he, then?

A. I think he is in the United States Army; I understood that he was.

Q. How long has he been away from Missoula?

A. Some four or five months.

Q. Four or five months? A. Yes, sir.

Q. How old a man is he, Mr. Cobban?

A. I should judge twenty-five years old; possibly twenty-six or twenty-seven.

(Testimony of R. M. Cobban.)

Q. Had he worked for you?

A. No, sir, I don't think he had ever worked for me up to that time.

Q. Well, what were the circumstances of his taking up his claim?

A. Somewhat similar to the others—though I didn't have as much conversation with Mr. Snyder personally. He received his information from John Chattin. Mr. Chattin had asked me, as I have stated, about claims, and I told him that I would get it, and Mr. Snyder was working for Mr. Chattin at the time, and Mr. Snyder came to see me about it at the time, and asked me if I would tell him if what Mr. Chattin had said was true, and I told him it was, and if he wanted a claim, he could have one under the same conditions, and he took one.

Q. Whom did you send him to for the purpose of being located? A. I think I went with him.

Q. You went with him? A. I think so.

Q. Well, there were two or three other persons in the party, weren't there? A. Yes, sir.

Q. What were their names?

A. Mrs. Chattin, Mrs. Daisy L. Chattin was one of the parties, and John Saleen, and I don't know whether there were any other or not.

Q. And wasn't John L. Deering another one?

A. I think so, and yet I am not certain.

Q. And they went with you up into the country?

A. They did.

(Testimony of R. M. Cobban.)

Q. Well, who is this John L. Deering?

A. He was a man that was working there at Missoula, working for Mr. Chattin at the time, or had been working for him.

Q. As a laborer? A. Yes, sir.

Q. And where is he? A. I don't know.

Q. Have you any acquaintance with him at all, except as he was introduced to you by Mr. Chattin?

A. Very little.

Q. And that was the same way with Mr. Snyder?

A. Well, I had known Mr. Snyder for some time prior, six months.

Q. And who was John Salleen?

A. John Salleen had been wood-hauling there, and I think at the time that this entry was made he was a stage driver between Clearwater and Missoula.

Q. Did you have a conversation with Mr. Salleen?

A. Yes, sir, I did.

Q. How did he come to talk with you about it?

A. He came to me and asked me if I could find him a timber and stone claim, and I told him I could under these conditions; that I would charge him a hundred dollars for locating and assisting him.

Q. Paying all the money and doing all the work that was necessary to locate the claim?

A. What was needed of the expenses—what money he needed, I would loan to him, yes, sir.

Q. And wasn't it the same with Daisy L. Chattin?

A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. And was she the wife of John Chattin?

A. Yes, sir.

Q. And did you make the arrangements with him with reference to her claim?

A. I made the arrangement with her husband, and she knew what the arrangements were, and they met with her approval.

Q. How did you go with this party? Did you take them up in a—

A. I don't remember now whether—I don't remember how we went.

Q. And do you remember anything about anything that was done after you got up into the mountains?

A. Yes sir, I remember going onto the ground and going with each individual to the ground that they located.

Q. Who assisted you?

A. I don't remember that anyone was there with me at that time.

Q. Are you sure of that?

A. No, sir, I am not sure.

Q. Well, who had selected these locations?

A. I had myself.

Q. Previous to your going up there?

A. Yes, sir, previous to this time.

Q. That is, previous to your taking these people up there? A. Yes, sir.

Q. So that all you had to do was to take them to their several locations? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. You had satisfied yourself of the desirableness of securing that timber?

A. I had all but one claim. I had—there was one claim, I think, I think it was the claim of Mr. Deering, that we went over—that I had never been on before. I went over it and picked out forties with him, the forties that we thought would make a good claim.

Q. Where did you stay when you went up there?

A. Stayed at Clearwater, I think.

Q. With Mr. Griswold? A. Yes, sir.

Q. It wasn't necessary, then, to run the lines on any of these pieces?

A. Well, we certainly did run the lines.

Q. Why? I understood you had made the locations before?

A. Well, I knew where the lands were, and we had to follow the lines to get on to these claims. It was very much easier to follow the lines than it was to strike out to find the claims without following the lines.

Q. How long were you up there?

A. We were up there for the day.

Q. For the day? A. Yes, sir.

Q. And you returned that night?

A. Yes, sir, that is my recollection about it.

Q. Then you started out in the morning and returned at night? A. Yes, sir.

Q. And then went home? A. Yes, sir.

Q. Now, then, had the estimate been made at that time?

(Testimony of R. M. Cobban.)

A. I knew what amount of timber there was.

Q. You knew what amount of timber there was on all of them?

A. No, not all of them. I knew that they were timbered fairly well, but I didn't know that the estimate had been made as to just the quantity of timber.

Q. Who had done that work?

A. Both Mr. Hambly and Mr. Sparks had been through that country. Mr. Sparks had gone some other way, but he had gone through that country, and he told me that there was very good timber on such sections that Mr. Hambly had been over and made estimates on, and I knew that that timber was very good, and of course, when I went through it myself, I satisfied myself of that fact.

Q. Well, was Mr. Sparks working for you?

A. No, he wasn't; but oftentimes, if he was passing by a piece of timber he might mention it. I remember of him saying that upon such section there was some pretty good timber.

Q. Upon which these locations were afterwards made? A. Yes, sir.

Q. By these people that you have just named?

Q. But if Mr. Sparks wasn't working for you at that time, assisting you in this very work, what was he doing?

A. Mr. Sparks was estimating for the Western Lumber Company, estimating timber on lands that they were purchasing.

(Testimony of R. M. Cobban.)

Q. What is that?

A. He was working for the Western Lumber Company and estimating timber for the Western Lumber Company.

Q. And wasn't he also working for you?

A. No, sir.

Q. In this very matter? A. No, sir.

Q. And didn't you pay him?

A. No, sir, I did not.

Q. For these very identical claims?

A. No, sir.

Q. Were you not sworn as a witness in your own behalf in the case that was brought—in the suit that was brought by Griswold against you in the Missoula District Court? A. Yes, sir.

Q. Do you remember that the testimony was taken down by the stenographer of that court, Mr. Glenny?

A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. I show you Mr. Glenny's signature. (Counsel hands witness paper.)

A. I see it.

Q. And read on page 37, as follows:

"State of Montana, County of Missoula, ss.

William N. Glenny—

By Mr. BICKFORD.—We object to all this. The objection is that counsel now attempts to read some purported instrument not authenticated in any way, so far as we know, something which purports to be certified

(Testimony of R. M. Cobban.)

by one Glenny, whose position and functions and duties are not apparent at this time, and we object to it because the document which counsel is attempting to establish has not been authenticated in any way, and not shown to have any connection with this case or to be related with it in any way, and certainly is concerning something which has not been brought out on the cross-examination, and therefore it is improper.

By Mr. MAYNARD.—In reply to the objection of my brother, I desire to say that it is for the purpose of controverting the testimony which Mr. Cobban has just given, to the effect that Mr. Sparks was not then in his employ, and that these locations of Daisy L. Chattin, John Saleen, J. L. Deering and C. C. Snyder, is not connected with that work, and I propose now to refer to the testimony which he gave himself in the civil suit which was brought by Mr. Griswold against him in the District Court at Missoula. I hold in my hands all of the testimony which this witness gave at that time, as taken by the official stenographer of that District Court, Mr. William M. Glenny, and to which is attached the certificate of said stenographer to such testimony, which is as follows:

State of Montana, }
County of Missoula, } ss.

Wm. M. Glenny, being first duly sworn, deposes and says, he was on the 7th day of May, 1901, duly appointed and qualified and acting court stenographer for

(Testimony of R. M. Cobban.)

the Fourth Judicial District of the State of Montana; that on said 7th day of May, 1901, as such court stenographer, he took in shorthand the testimony given in a certain action then pending in the District Court of the Fourth Judicial District in and for Missoula County, State of Montana, tried before S. G. Murray, referee, wherein C. L. Griswold was plaintiff and R. M. Cobban was defendant; that R. M. Cobban was a witness and testified in said action in his own behalf; that the foregoing is a full, true, and correct transcript of the evidence of said R. M. Cobban, given on the trial of said cause.

WM. M. GLENNY.

Subscribed and sworn to before me this 25th day of April, 1902.

[Notarial Seal] FRANK WOODY,

Notary Public in and for the County of Missoula, State of Montana.

By Mr. BICKFORD.—Now, our objection is that under the laws of the State of Montana, that evidence would not be admissible for the purposes of impeachment, nor for the purposes of cross-examination.

Q. I ask you to read that with me, on page 3, of the testimony, Mr. Cobban?

By Mr. BICKFORD.—Give it to the witness and let the witness read it himself.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—The portion of the testimony reads as follows:

"The next four claims, B. L. Chattin, J. Saleen, J. L. Deering and C. C. Snyder, were in the same vicinity; in fact, there were four of them on section 10, and Snyder on section 2, adjoining each other; Mr. Griswold was requested by me, in fact he acted partly on his own judgment in going into certain townships to show a claim, Mr. Griswold went into this district and reported no timber worth taking there, that the timber was not worth taking. And Mr. Sparks, who was working for me went to see in that vicinity. I requested him to look this ground over; he did so; and on Mr. Sparks' estimates, and his opinion, I told these people where they could get these claims."

Was that true or false?

A. It was true in a way; yes, sir. As I testified here before, I borrowed Mr. Sparks—I stated here yesterday, I think, in my testimony, that several times I borrowed Mr. Sparks, and in that way he was working for me; but only in this way, and this was the only way he worked for me. In a few instances, when he was working in a certain locality, I asked Mr. McLaughlin if he would allow me at any time when he was working in a certain locality, and that I had something that I wanted looked after, if I could borrow him for a day or so, and that is the only way he was working for me.

Q. When you borrowed him, didn't you pay him for his services? A. No, sir, I did not.

(Testimony of R. M. Cobban.)

Q. Didn't you pay the Western Lumber Company anything?

A. I did not. It was understood—I had a team and a camp outfit in that neighborhood, and it was understood that I paid that expense myself, and that was an offset for what little time I might borrow Mr. Sparks. But I never paid Mr. Sparks a dollar to the best of my knowledge and belief for work during that season in that country on the Blackfoot river.

Q. Well, hadn't Mr. Griswold before this time mentioned these claims to you?

A. No, sir, he had condemned that part of the country. I don't think he was ever in there. He might have been in there, but he certainly condemned it.

Q. Wasn't Mr. Muckenheirn located up there?

A. He was there, or near there.

Q. Well, wasn't he located by Mr. Griswold?

A. No, sir, I think not.

Q. Well, now, didn't Mr. Griswold report to you, and wasn't it the basis of his determination, that while the timber was good enough that it was inaccessible, and that it was rocky and steep, and that it would cost upwards of a thousand dollars to open a road by which the timber could be brought down to the river?

A. Mr. Griswold condemned the country up there, and said that there were no claims worth taking.

Q. Well, wasn't it solely on the ground of inaccessibility? A. I couldn't say as to that.

(Testimony of R. M. Cobban.)

By Mr. WALSH.—It don't seem to be a matter of very much consequence whether it was or not.

By Mr. MAYNARD.—Well, the point was that Mr. Griswold—

By Mr. WALSH.—Well, it seems to be a matter of veractiy between Mr. Cobban and Mr. Griswold.

By Mr. MAYNARD.—Mr. Griswold reported that the timber was not worth taking, and the truth seems to be that Mr. Griswold was conscientiously working for Mr. Cobban's interest, and reported that the timber wasn't worth taking because it was inaccessible.

By Mr. WALSH.—Well, it is refreshing to know that he was conscientious in one instance.

Q. Well, where were these entries made afterward, these four?

A. They were made in the Missoula land office.

Q. Who had charge of the business?

A. I think Mr. Catlin made out the papers for the entrymen; I had promised to give them all the assistance they needed.

Q. What is that?

A. I had promised to give them all the assistance they needed, and that was one of the things that was included in the expenses—that they were to opay me for.

Q. And in the same way, the publications required by law were looked after by Mr. Catlin, and all the other necessary expenses paid?

(Testimony of R. M. Cobban.)

By Mr. BICKFORD.—We object to that, upon the ground that the witness has already testified with reference to that, and it seems to be a gratuitous statement of counsel concerning a matter about which the witness has not testified.

Q. What is the answer, Mr. Cobban?

A. Well, I am not certain as to that, whether they paid their own expenses in some instances, or whether we did for them.

Q. Well, you have no knowledge of any kind, have you, based on any fact or any data in your possession, of a dollar of expense having been paid out by these entrymen in their own behalf?

A. No, I haven't any absolute knowledge of that.

Q. Now, I have here before me the record, page 884, Mr. Cobban, testimony of Mr. Hershey, as follows: "August 10th, 1899, John Saleen made timber and stone sworn statement, No. 289. Notice was published in the "Missoulian." John L. Deering, Daisy Chattin, Charles C. Snyder and Stephen Tepper were named as witnesses, and on the 24th day of October, 1899, final proof was taken before William Q. Ranft, receiver, and Charles C. Snyder and Stephen Tepper appeared as witnesses, and upon the same date final receipt and certificate were issued." That was on the 24th day of October, and on the 25th day of October, the next day, Mr. Saleen conveyed the land that he had entered—proved up on the day before to you? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Have you any present recollection of the circumstances of this conveyance? A. Yes, sir.

Q. Well, what is it?

A. Mr. Saleen came prepared to execute the mortgage in accordance with the agreement that had been made, and at that time I met him and offered to purchase this timber, instead of him giving me a mortgage, and he accepted my proposition and the deed was made in accordance with it.

Q. Who was he with?

A. I don't recollect that he was with anyone.

Q. Did you pay him in currency or with a check?

A. I gave him a check; I may have given him some currency also.

Q. Have you the check there?

A. I have. What is the date of that please?

Q. October the 25th.

A. Here are two checks to John Saleen.

By Mr. MAYNARD.—I will read these checks into the record. The first check reads as follows:

"THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of John Saleen three hundred and fifteen (315.00) dollars. Dated October 24th, 1899.

(Signed) R. M. COBBAN.

(Endorsed): John Saleen.

Stamped, "Paid."

Q. Now, that three hundred and fifteen dollars was

(Testimony of R. M. Cobban.)

by reason of the fact that there was not a full hundred and sixty acres in his claim, is it not?

A. That is my recollection of it.

Q. And on the next day you gave him a check which reads as follows:

"THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of John Saleen $96.50, ninety-six and 50/100 dollars. Missoula, Montana, October 25th, 1899.

(Signed) R. M. COBBAN.

(Endorsed): John Saleen.

Stamped. Paid."

And this was the amount that you gave him for the deed, is it not?

A. Over and above the indebtedness to him.

Q. Yes, sir.

A. Yes, sir, I think so.

Q. And no note or mortgage was given by Mr. Saleen?

A. No, sir.

Q. And on the delivery of the deed to yourself, and the delivery by you to him of this check of $96.50, the transaction was closed?

A. Yes, sir, but it wasn't closed until he had come for the purpose of giving a mortgage, and I made him the offer for the land and he accepted it.

Q. Now, will you please look up the checks that you gave Mr. Snyder?

A. I didn't give Mr. Snyder a check.

(Testimony of R. M. Cobban.)

Q. I will call your attention to Mr. Snyder's claim, showing that in this case, on October 20th, 1899, final proof was taken before William Q. Ranft, and John Saleen and Daisy L. Chattin appeared as witnesses, and that on the 28th day of October final receipt and certificate were issued. You have a distinct recollection that you didn't pay him in a check? A. Yes, sir.

Q. What were the circumstances in this case, Mr. Cobban?

A. Well, the circumstances in that case were just the same as the Saleen case.

By Mr. BICKFORD.—What case are you talking about now, the Snyder case?

By the WITNESS.—Yes, sir.

(Witness Continuing.) —Except that when I came to buy the claim it seemed that he was owing Mr. Chattin, and had had some transactions with him, and he requested me to settle with Mr. Chattin instead of with himself, which I did.

Q. So you paid Chattin all that was coming to Snyder? A. Yes, sir.

Q. And you paid him with a check?

A. No, sir, I gave him receipt on an indebtedness which he owed me. Mr. Snyder was owing Mr. Chattin, and Mr. Chattin was owing me.

Q. On the purchase of a lot?

A. On the purchase of a farm.

Q. And you credited him with the payment?

(Testimony of R. M. Cobban.)

A. I did.

Q. How much for?

A. A hundred dollars over and above the amount that was—that the mortgage was for—the amount of the loan.

Q. More than the amount that you had advanced him, you mean? A. Yes, sir, that I had loaned.

Q. In this case no note or mortgage was given?

By Mr. WALSH.—Let me inform you that if any of these people had executed a note they will be produced here, and if it is not on the record, we will admit it, and have the record show that no note or mortgage was executed, either then or before.

By Mr. MAYNARD.—Very well; that will do.

By Mr. WALSH.—You have already got this on the record, and it don't improve the situation by putting that in again.

Q. And the receipt was for a hundred dollars?

A. Yes, sir.

Q. And that closed up the deal? A. Yes, sir.

Q. Well, now, tell me about Mr. Deering's claim, Mr. Cobban?

By Mr. BICKFORD.—We submit, if your Honor please, that counsel should propound questions to the witness.

Q. The Deering claim, the final proof was made on the 20th of October, and on the same day the conveyance was made to you. Do you recall that; what do you recall about that, Mr. Cobban?

A. Well, I know that I purchased the claim on that

(Testimony of R. M. Cobban.)

day; I don't remember just the transaction that occurred, other than that he was to fix up the mortgage on that day, and instead of fixing up the mortgage, he was offered so much for his claim by me, and he accepted it.

Q. On the same day that he proved up?

A. It appears from the record so.

Q. Well, now, I wish you would say—you have no present recollection as to how much you paid him?

A. Yes, I have; I think that I paid him somewhere in the neighborhood of $625.00. What is the date of the deed, if you please?

Q. The 20th of October. And the deed to you by John W. Chattin and Daisy L. Chattin was made on the same day proof was made?

A. I cannot find any check; my recollection is that I think that I paid him in cash.

Q. And you paid him that over the expenses?

A. I think I paid him a hundred dollars over and above the amount of money that he had borrowed of me—all the money that he had borrowed of me.

Q. Now, then, the Daisy L. Chattin claim. What have you to say as to that? She conveyed to you on the same day that she proved up, the 20th of October, did she not?

A. Yes, sir.

Q. Was that the same way?

A. No, sir, not hers; the same amount, if I recollect right, was paid her that I paid to Deering, but it was paid by a receipt to them on account. They were owing me.

(Testimony of R. M. Cobban.)

Q. They were owing you? A. Yes, sir.

Q. And you gave them a receipt and credited them with a hundred dollars?

A. Mrs. Chattin agreed to sell the claim on that day to me, rather than give a mortgage and a note, and go in debt any deeper than they were; and she concluded to accept the offer which I made them at that time, and instead of getting the cash for her claim, which she might have had, she said to simply give her husband a receipt on the farm for it.

Q. Now, in each of these cases you have just—this bunch that I have just called your attention to where the locations were made at the same time, under your supervision, and where all of the expenses of every kind was advanced by you, and the deed made on the same day or the next day after final proof, did you have any particular trouble in coming to terms with any of these people?

A. In the first place, I haven't stated that all the expenses had been paid by me. I don't know that they were. I loaned them a certain amount of money. I had no trouble whatever in coming to terms, because I felt that I was paying all that the land was worth, and they were satisfied that such was the case, and when I made an offer of what I thought the land was worth, I had no trouble.

Q. You had no trouble in any instance?

A. There was in some instances a little bantering back and forth, but after going into it a little further

(Testimony of R. M. Cobban.)

and they found out they could get no more for their claims, they agreed; but in these particular claims, I don't remember that there was any particular bantering; they were satisfied with the offer I made them at first.

Q. The ease with which this transaction was closed wasn't the result of any understanding at all that they should do these very things?

A. There certainly was no understanding between those entrymen and myself that they were to sell claims to me, or to deed them to me or anything of that kind; there was no such understanding. I had never made any agreement or talk with them to that effect.

Q. You had not talked with them?

A. I don't know that there was any talk about those transactions, any more than the purchase by myself of a great many claims—timber claims that had been held for years, and in this and in other real estate transactions, many of them that I have had. I don't think they split hairs as close in this country as they do in Michigan; I don't think they quarrel over a nickel; they come to terms quicker here; at least, deals are carried on quicker.

Q. And if there had been anything said to Mr. Catlin, who had had charge of the proceedings so far as the land office was concerned, in preparing these notices in these cases, that it was expected that upon their receiving receiver's final receipt, that they would

(Testimony of R. M. Cobban.)

immediately convey to Mr. Cobban and get a hundred dollars over and above their expenses, that was, without your knowledge or consent?

By Mr. WALSH.—We object to that for the reason that it is not proper cross-examination, and no foundation has been laid for any such question as that, and no testimony has come from any source that Mr. Cobban did make any bargain at all. You needn't answer that question, Mr. Cobban, unless the counsel desires to state upon his professional honor that he intends to submit evidence, upon that question, in which case we will withdraw our objection.

By Mr. MAYNARD.—Mr. Cobban has stated that such reports were made by Mr. Griswold and others in his employ, and that it was without his knowledge or consent.

By Mr. WALSH.—He has answered your question heretofore, and that is a further reason why it should not be asked again. It is not proper cross-examination.

Q. The same answer would be given as you gave before, then?

A. Yes, sir, certainly, and further, I would add to that answer that I don't think it would be possible for Mr. Catlin to have made any such statement in any event.

Q. Well, now, let us go on and take the two cases I recall, of Lizzie T. Catlin and Martha B. Wright.

(Testimony of R. M. Cobban.)

You have some knowledge as to how those claims came to be taken up, have you not?

A. I knew through Mr. Catlin that these people wanted to find claims, and I knew of them.

Q. What is that? A. I knew of them.

Q. You did know of that? A. Yes, sir.

Q. What did Mr. Catlin say to you in regard to the matter?

A. I think Mr. Catlin said that these people were desirous of finding suitable locations for good timber claims.

Q. And you were willing that they should make locations under the Stone and Timber Act, were you not?

A. I certainly had no objections to that.

Q. And you were willing to advance all the money that was required to be paid for the land, and all the expenses of every kind connected therewith?

A. I offered to make these people a loan. They were thoroughly worthy people, and I considered a loan of that kind as an absolutely safe and good loan.

Q. A good loan? A. Yes, sir.

Q. And you knew of the fact that Mr. Catlin, himself, made a location, did you not? A. I did.

Q. And you knew of the fact that Mr. Catlin took his wife and Miss Wright—it was then Miss Wright—or whatever her name was—Miss Wright, to the location? A. Yes, sir.

Q. And immediately after final proof and conveying

(Testimony of R. M. Cobban.)

to you, and receiving a hundred dollars over and above the expenses?

A. No, sir; I did not know of that fact.

Q. What did you say?

A. I did not know of that fact.

Q. Well, didn't you know that a hundred dollars over and above the expenses was paid Miss. Wright on the very day that she proved up? A. Yes, sir.

Q. Was that done with your knowledge and consent? A. Yes, sir.

Q. Did you have any personal dealings with her?

A. I think not.

Q. Well, how did it happen, then, that the conveyance for and in consideration of the sum of a hundred dollars, which she received over and above the expenses, was made by her to you the very day that she proved up?

A. It was made for the very reason that I authorized Major Catlin to offer her a sum which would equal the amount that she owed me, plus a hundred dollars, instead of giving me a note and mortgage on the claim, and that offer was by her accepted and the deed was made.

Q. And what was the difference between her case and Mrs. Catlin?

A. The difference was that Mrs. Catlin's deal was not closed up at that time. Well, the deed was made to me on that day, but there was no transfer made for

(Testimony of R. M. Cobban.)

some time afterward, and the consideration that was paid for that deed was three hundred dollars over and above the amount that they owed me on account of the loan.

Q. Well, why did you pay her two hundred dollars more than you paid Miss Wright?

A. Well, I think it was a better claim, with heavier timber on it, for one reason, and the second reason was that they were poor people, and people that I have known well a good while, and I favored her, perhaps, gave her more than I thought of paying for other claims.

Q. Now, as a matter of fact, Mrs. Catlin received twenty-five dollars at one time, and seventy-five dollars at another, didn't she?

A. I gave the money to Mr. Catlin to pay to her. I gave him three hundred dollars to give to her, and how he paid it to Mrs. Catlin, is something I know nothing about.

Q. You gave him that much in currency?

A. I am not certain whether I gave it to him in currency or in a check.

Q. It was one or the other? A. Yes, sir.

By Mr. WALSH.—Where did you get that impression that Mrs. Catlin got seventy-five dollars at one time and twenty-five dollars at another, Mr. Maynard?

By Mr. MAYNARD.—From the testimony in the case, Mr. Walsh. You don't remember it as I do.

(Testimony of R. M. Cobban.)

(Whereupon an adjournment was taken until Friday, May 9th, 1902, at ten o'clock A. M.)

HENRY N. BLAKE,
Examiner in Chancery.

Thursday Morning, July 10th, 1902.

The hearing was resumed at the office of the Examiner in Helena, pursuant to the stipulations and agreements of the parties.

Whereupon the witness, R. M. COBBAN, was recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, I call your attention to the subject matter which we were considering at the time of our adjournment. You said, and I read from the record, page numbered 0-38, of your testimony on the cross-examination, as follows:

"I gave the money to Mr. Catlin to pay to her. I gave him $300.00 to give to her, and how he paid it to Mrs. Catlin is something I know nothing about.

"Q. You gave him that much in currency?

"A. I am not certain whether I gave it to him in currency or in a check.

"Q. It was one or the other?

"A. Yes, sir."

Now, are you positive that that amount was given to him by you? A. Yes, sir.

Q. For that purpose? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. That was the profit that she was to receive for her land?

A. I don't know whether there was anything of that kind. She was paid so much for her claim in addition to the amount of money that had been borrowed by Mr. Catlin for her.

Q. Well, that would be what she made out of the land deal? A. Yes, sir, I suppose so.

Q. Now, I read from the record, Volume IV, page 2132, from the testimony of Lizzie T. Catlin.

"Q. Mrs. Catlin, when you gave this deed, after you executed, who did you give it back to?

"A. The deed?

"Q. The deed of your land, yes.

"A. I think Mr. Catlin took it.

"Q. Did your husband pay you any money?

"A. Not that day.

"Q. Did you get some money?

"A. Yes.

"Q. When?

"A. I don't remember exactly, a day or two afterwards, probably.

"Q. How much did you receive?

"A. One hundred and twenty-five dollars.

"Q. And your husband paid you that?

"A. Yes, sir."

I also read from the record, which is Volume VIII, page 460, from the testimony of Mrs. Catlin's husband, John B. Catlin, as follows:

(Testimony of R. M. Cobban.)

Q. How much did your wife make on the deal?

A. I think she made $250.00.

Q. Well, how strong do you desire that to be?

A. Well, I am not prepared to say how much she did make on it.

Q. Well, where did she receive her money

A. She received her money at home; sometimes within—I would say within a week.

Q. Who handed it to her?

A. I did; I handed it to her, if I recollect right.

Q. If you recollect right; what do you mean?

A. I think I gave it to her, if I recollect right, at two different times.

Q. And you don't remember what those times were?

A. No, I don't; she might not have received that amount. Now, I am not positive in this matter.

Q. Are you willing to swear, Major Catlin, that your wife received as her profit for her investment—for her taking up this land, which she sold to Mr. Cobban, more than $100.00?

A. Yes, I am sure she got $100.00; I am satisfied of that.

Q. What is that?

A. No, I wouldn't swear that she did.

Q. You wouldn't swear that she did?

A. No, I would not; but Ithink she did.

Q. Well, what makes you think so, Major?

A. Well, it is just an impression that I have got,

(Testimony of R. M. Cobban.)

that she got more than that, but I wouldn't swear positively as to the amount.

Q. Now, do you wish to be understood as swearing here that the money that you paid yourself to your wife, and the only money that she ever received, from the beginning to the end of the transaction, that you don't remember the exact amount?

A. I am willing to swear that I paid her her money in two different payments. I think I paid her $75.00 the first time, and I cannot tell what I paid her the next time. I paid her more than $100.00, I am satisfied, but I cannot recall the amount.

Q. But you are not prepared to swear positively, from your knowledge, that you paid her any considerable amount over $100.00? A. No, I am not.

Q. Why was it that the payments were made of this small sum of $100.00, or thereabouts, in two sums?

A. Because I used part of the money myself, and returned it a few days later to her.

Q. That is, the money that you had received from Cobban, the $100.00 that you were to deliver to your wife, you spent it before you had given it to her?

A. I spent some of it, yes, sir.

Q. Do you remember how much it was that you spent?

A. I do not; I remember that the money that I got from Mr. Cobban was probably four or five days after the final proof was made."

(Testimony of R. M. Cobban.)

By Mr. BICKFORD.—Now, we move to strike out the testimony read by counsel for the reason that it is a misrepresentation of the testimony heretofore given, and is not necessary for the cross-examination of the witness, and because it is redundant, irrelevant and immaterial to the matters in issue in this case, and simply encumbers the record herein without serving any useful purpose.

Q. Now, having read the testimony of Mr. and Mrs. Catlin, Mr. Cobban, what have you now to say as to whether you paid the sum of $300.00?

A. I paid the sum of $300.00.

Q. For the purposes that you have stated?

A. Yes, sir, the sum of $300.00 in addition to money that I had previously loaned to him for her.

Q. So that Mr. Catlin is mistaken in his testimony, is he?

By Mr. WALSH.—We object to that for the reason that it is not proper cross-examination.

A. The amount, $300.00 was certainly paid.

Q. Now, I next call your attention to the entries of John H. Hardy of Groveland, Massachusetts, and Elvira M. Hardy, also of Groveland, Massachusetts, named in the printed bill of complaint herein, on pages 41 and 42. What relation was Mr. and Mrs. Hardy to you?

A. They are my father in law and mother in law.

Q. Do they reside in Groveland, Mass?

(Testimony of R. M. Cobban.)

A. They do.

Q. Are they living there now? A. They are.

Q. Were they visiting you at your home in Missoula in the summer of 1899? A. They were.

Q. How long a time were they visiting you?

A. They were with me nearly a year.

Q. At your place from what time?

A. I don't remember what time they came. I should judge—I think somewhere about July, and they remained with me until the following spring.

Q. How old a man is Mr. Hardy?

A. He is probably 65 years old; somewhere along there.

Q. And the wife?

A. I don't know just her age but I should judge about 62.

Q. Was that the only time that they had visited you, since you were married to your wife?

A. They were residents of Missoula for something like two years previous to that.

Q. When was that?

A. Well, I think they came out in 1893 and stayed with me in Missoula. The bought property there and started to build a house. I think that they remained there something over a year but I don't remember the dates.

Q. Well, what business was Mr. Hardy engaged in; what has been his life work?

(Testimony of R. M. Cobban.)

A. He is a machinist and engineer. He has been following that for the last 20 or 25 years.

Q. Is he engaged in that work now?

A. He is blind.

Q. Blind? A. Yes, sir.

Q. So that he is unable to work?

A. He is utterly unable to work.

Q. Totally blind? A. Yes, sir.

Q. How long has he been totally blind?

By Mr. BICKFORD.—We object to this testimony upon the ground that it serves no useful purpose what ever in the case, but simply encumbers the record.

A. His eyes have troubled him considerably starting when he was in the army, and they have been troubling him ever since, all the time. He is an old soldier, injured in the army and disabled. Probably he has been following his occupation until about three years ago.

Q. Well, Mr. and Mrs. Hardy were with you visiting, and while they were there they took up pieces of land under the Stone and Timber Act, did they not?

A. They took up a claim each, yes, sir.

Q. And they afterwards conveyed to you, did they?

A. Yes, sir.

Q. Will you please tell me just the facts and circumstances of their taking up these claims?

By Mr. BICKFORD.—That is objected to as being irrelevant and immaterial and not proper cross-examination.

(Testimony of R. M. Cobban.)

A. I don't know that I can tell you just the facts. If you ask me anything you want to know with regard to it I will try and answer your questions.

Q. Was it at your suggestion that they took up the claims?

A. No, sir, it was not. I may have—they conferred with me in regard to it, and I may have advised their taking up the claim. They had been anxious to take up claims, and they were anxious when they were here before to take up claims and had some talk about taking a homestead, also, while staying here.

Q. Who went with them to their location?

A. I did.

Q. Was anyone else in your company?

A. Yes, sir.

Q. Who else was in your company?

A. Well, Abraham J. Jemison, was with us on the ground.

Q. Had the locations been made by you previous to your going up there?

A. They had been picked out at the request of Mr. and Mrs. Hardy, through me. They had asked me to try and find them some claims, and I had spoken to Albert Jemison about it, and asked him whether he could find two good claims for them; and he notified me that there were two good claims in such and such a place, that was vacant ground—Government ground, and I went with Albert's father to look up the ground, and they took them up.

(Testimony of R. M. Cobban.)

Q. Had you caused an estimate of the timber to be made?

A. I don't know that I had at that time. I did about that time, or it might have been before, and it might have been after.

Q. Who did that work for you?

A. Well, I had different ones estimating upon it.

Q. I mean these particular locations.

A. I think that Mr. Hambly estimated.

Q. Mr. Hambly? A. Yes, I think so.

Q. And the estimate might have been made previous to your going there in addition to the fixing of the corners of the location?

By Mr. BICKFORD.—That is what the witness has said.

A. It might have been before that time, but I don't know whether it was or not.

Q. So that all that you had to do was to take your father and mother onto the ground and return home with them?

A. Well, we had to look over the ground sufficient to be able to testify intelligently in regard to it, its character, etc., and we went over it sufficient to know that it was heavily timbered.

Q. And you approved of Albert Jemison's judgment?

A. Yes, sir.

Q. Do you recollect how long a time you spent up there?

(Testimony of R. M. Cobban.)

A. I think that we were gone from the house the greater part of the day.

Q. That is the old man Jemison's house?

A. Yes, they were some four or five miles from his house.

Q. And then did you return home, starting for home that afternoon?

A. I don't remember whether we started for home that afternoon or the next day. It was the next day, the following day that we started for home.

Q. I show you the certified copy of the deed that is in evidence in this case. They both join in conveying their lands to you as appears from the deed. (Counsel exhibits paper referred to to witness.) A. Yes, sir.

Q. Did you make the same arrangement with them that you did with the other entrymen and entrywomen that you have testified about?

By Mr. BICKFORD.—We object to that for the reason that counsel does not distinguish between the entrymen and entrywomen that he refers to, and the testimony shows that different arrangements were made with different entrymen and entrywomen, and covering different transactions; and in fact, each transactions stands upon its own basis and is not connected in any way with any other transaction, and the question is also so indefinite as to make it impossible for the witness to answer it intelligently.

(Testimony of R. M. Cobban.)

A. I would like to have the question put a little different.

Q. Well, you have stated in your testimony several times, which I have here before me, that you located these entrymen and entrywomen, and took entire charge of the matter for and in consideration of their paying you $100.00, and making the loan when they desired it and so on. Now, I ask you if the same arrangement was made in the case of Mr. and Mrs. Hardy?

A. No, sir, it was not.

Q. Well, what was the arrangement in the case of Mr. and Mrs. Hardy?

By Mr. WALSH.—Wait just a moment. We object to that because the question of counsel presupposes that some arrangement had been made; when, as a matter of fact, the witness has testified that no arrangement of any kind was made between the witness, and either Mr. or Mrs. Hardy.

A. As I stated before, the party—Mr. and Mrs. Hardy had requested me to try and find them some locations, knowing that I was in the woods, and familiar with the lands. They offered to pay the expenses of the finding of the claim, and that was the only expense that they were to be put to—that is, they were paying Mr. Jemison for locating their claim. I wasn't to charge them $100.00 as I was some of the party, but I was doing what I could to assist them. They instructed me to make these arrangements with Mr. Jemison; and

(Testimony of R. M. Cobban.)

I did—by which he was to get $25.00 apiece for locating these claims—locating these parties and showing them the ground. There was no arrangement in any way, shape or manner; and there was no suggestion, had not been one word said in any way, shape or manner that they were to sell the land to me, or to anyone else. The proposition was discussed as to whether or not a timber claim was a good investment, and whether it would be wise for them to take up a claim. They were anxious to use their rights, and I believed that it was a good investment for them. Until after they had proven up, it was never in any way, shape or manner, suggested that I would buy the claims or that I would make them an offer for them.

Q. But, as a matter of fact, immediately after they did prove up on their claim, they did convey to you, did they not?

By Mr. WALSH.—The record shows what the fact is about the matter; and the record shows the dates of the deeds; and the question is absolutely irrelevant and immaterial, and an incumbrance of the record.

A. They did. I had an opportunity to sell some timber land, and I made them an offer for their land, and it was accepted by them.

Q. They were living in your house during the whole time of their—that it was required to prove up on their land, were they not?

A. They were living part of the time at my home,

(Testimony of R. M. Cobban.)

and part of the time with another daughter in Missoula —living between the two places; they were sometimes at my place, and sometimes at their's.

Q. Did you have personal charge, or did Major Catlin, of the necessary work in preparing the advertisements, and getting the witnesses?

A. I don't remember. The advertisements are prepared at the land office; they are not prepared by the witnesses or the claimants at all.

Q. I am aware of that fact; but I mean as to naming —giving the officers of the land office the names of the witnesses, and seeing that it was properly published in the newspapers, and that there were no mistakes in the spelling of the names, and in paying for the publication, and so no, as testified to here, has been done correctly, who did that?

A. I presume very likely that I may have looked after it for them. I don't know who made the papers out, whether I made them out, or who it was; but at their request I did look after it as much as I could, either directly or through Mr. Catlin.

Q. Yes, and relieve them from that work?

A. Yes, and further, there isn't one in five hundred persons who take up a claim, that know what to do— the routine of the work and so forth, and it is necessary for them to have someone to look after that for them, and assist them; and it is customary in all cases, or nearly all cases, that they have someone to do that work.

(Testimony of R. M. Cobban.)

Q. Well, Mr. Cobban—

A. —And in this case it would be the most natural thing in the world, knowing that I was familiar with the land office, and the rules and regulations, and familiar with the timber lands, that they should ask me to assist them, and the most natural thing in the world that a son in law would assist them, and give them what assistance he could.

Q. And you assisted them further by paying for the the land, did you not?

A. No, sir, I did not.

Q. Who did pay for the land?

A. They paid for the land themselves.

Q. From whom did they get the money?

A. I am not certain whether I loaned them the whole of the money or a portion of it. My impression now is that they furnished—that they had part of the money, and that they borrowed a portion of it from me.

Q. Have you anything more than an impression in regard to that important fact in the case?

A. Not as to the whole amount. I think they used a portion of their own money. I may have made them a loan for some of the money, but not the whole of it.

Q. How much of a loan did you make them?

A. Well, I don't remember, but I think in the neighborhood of $600.00.

Q. I am anxious that you should give us all the information that you have upon that subject?

A. Well, I cannot tell you now.

(Testimony of R. M. Cobban.)

Q. Well, have you any present recollection of your father in law, Mr. Hardy, giving you any money at any time for the purpose of paying for the land?

A. They wouldn't give it to me for paying for the land. I didn't pay for this land; they paid for their own land.

Q. Well, you gave them $600.00, you say?

A. I loaned them some money, but I don't remember the amount.

Q. Do you think it was $600.00?

A. Somewhere in that neighborhood.

Q. So that there is a balance of about $200.00 that would be required to pay for the land?

A. I think they had about that amount of their own money. It was all their own money because they borrowed it from me.

Q. Passing that, I am not laying any point upon that question at all; I am now asking you about your recollection as to what money they had of their own outside of the money that they obtained from you?

A. I have stated that that is my recollection, that they had of their own—at any rate, they had somewhere from two to four hundred dollars of their own money.

Q. Have you—haven't you some recollection as to having had some conversation with your father, or your mother, during the time that elapsed between the filing and the making of final proof, as to what shape they were in financially, to buy the land?

(Testimony of R. M. Cobban.)

A. They had a place in Massachusetts that they valued at $2500.00, that they were expecting to sell at any time. It was on the market at the time. It has been sold since for something like $2,000.00. They were expecting before they proved up that they would have their own money to make it. They did not have the money when they came to make their final proof, and so I loaned them the money.

Q. Now, isn't it true, that as a matter of fact, you loaned them all of the money that was required to pay for the land? A. I don't think that I did.

A. I don't think that I did. And yet I won't say that I didn't loan them the whole sum. There were numerous transactions, and I know that they had some money, but I don't think that I loaned them the full amount at that time. If they had wanted it for any purpose, a thousand or fifteen hundred dollars at that time, or any other time, I would have loaned it to them probably. I didn't loan it to them on the strength of their timber claim probably, but I loaned is because I would have loaned it at any time had they asked it for any purpose.

Q. But you now say, Mr. Cobban, that you made them a loan for the entire amount that was required?

A. I may have done so, but my impression is that I did not.

Q. And you have no present recollection of any amount of money that they had of their own that was used for any purpose?

(Testimony of R. M. Cobban.)

A. Nothing more than I have stated already.

Q. Well, did you go with them at the time the payment was made into the land office?

A. No, sir, I did not.

Q. Who went with them?

A. I don't know.

Q. How are you able to state that you didn't go?

A. Well, I will take that back. It is barely possible that I might have gone into the land office that day with them. But I have no recollection of it now, if I did, and I don't think that I did.

Q. And it is possible that if you did go in the land office with your aged father and mother in law, at the time that final proofs were to be made, that you paid the money yourself for them into the land office?

A. No, sir, it isn't possible; I didn't pay the money into the land office. They paid their money in themselves, and it was their own money; and they paid it in.

Q. Do you remember when you gave it to them?

A. No, sir, I do not.

Q. So that if you have any recollection as to when you gave them the money to pay for the land, it might have been on the very day that payment was made?

A. Why, certainly it might have been on that day; but I know positively that I had nothing to do with any payment for the land to the Government.

Q. There was no occasion for their having the money until the day that the payment was to be made, was there? A. No, sir.

(Testimony of R. M. Cobban.)

Q. And have you any recollection as to what—in this case, as to what the conditions of the loan were?

A. There were no ironclad conditions as to any security. I knew that they were trying to sell their place, and it was expected that they would sell it very quickly, and there was no agreement made as to what security would be given me. I didn't ask it; I wouldn't ask it now, if they were to come to me for money.

Q. But there was something said, wasn't there, as to when they were to pay it back? A. Yes, sir.

Q. Well, what was that?

A. Well, they were to pay it back when they sold their place.

Q. And it was left in that way? A. Yes, sir.

Q. And no note or mortgage was given by them?

A. No, sir.

Q. And the only security that you had for the amount of money that you paid, was the general understanding between you, that when they sold their place, that they would give you the money back?

A. Yes, sir.

Q. Were they to pay you interest?

A. There wasn't anything said about interest. I shouldn't have asked them for interest.

Q. And when was this place sold?

A. Their place wasn't sold until this year.

Q. And how long ago?

A. Some months ago.

Q. So you would have been out the use of your

(Testimony of R. M. Cobban.)

money for two or three years, then, if you had waited until the proceeds came from the sale of the house and lot? A. No, sir, I think not.

Q. Why not?

A. Because I think they would have gotten the money—borrowed the money on their return east; they would have borrowed the money on their home rather than have me carry it.

Q. They would have mortgaged their home?

A. I think so, rather than have me out my money. However, I never would have exacted any such thing as interest from them in any shape or manner. But they are very independent people, and they would not want anyone to carry them for any length of time.

Q. Are you able to state as to whether there was an incumbrance on the house or not?

A. Yes, sir, there was a small one.

Q. How much?

A. I think about $600.00.

Q. And that was on at the time of the purchase of this timber?

A. Yes, that was held by the building and loan association. It called for monthly payments, and they were reducing the amount right along.

Q. This property was being bought then from money that they were receiving from a building and loan association?

A. They had bought and paid for the piece of land without the building.

(Testimony of R. M. Cobban.)

Q. And had mortgaged the place? A. Yes, sir.

Q. And you say that they sold it for $2,000.00?

A. They sold it for something over $2,000.00; the exact amount I don't know.

Q. So you think they would have given you a second mortgage on this property to secure the loan they obtained from you, to buy this stone and timber claim, if they hadn't been successful in selling it to you?

A. I think the likelihood is that they would have given a new mortgage on the place, and not a second mortgage. By giving a new mortgage they could have paid me up. The property was amply worth.

Q. Well, now, Mr. Cobban, wasn't there anything said by you to them, or them to you, in regard to this matter, which would lead these New England people, living down there in Massachusetts, to go to the limit that you say they would go, or which was possible they would have to go in order to pay for this land; wasn't there anything said to them, to the effect that they would not have to go to that limit, and that you would take charge of those things?

By Mr. BICKFORD.—We object to that as calling for hearsay testimony from the witness, and further, upon the ground that it is not proper cross-examination.

A. No, sir, there was not anything said to that effect.

Q. Well, now, if there was not anything said between you at any time, no understanding, express or implied, that they were to transfer this land over to you, what,

(Testimony of R. M. Cobban.)

if you know, were their plans with reference to this land, after they had obtained title to it.

By Mr. BICKFORD.—We object to that because it is irrelevant and immaterial, and is calling for a conclusion from the witness, and not for a fact; and it is not proper cross-examination.

A. I presume that they expected, when they got a good price for their land, that they would sell it. In fact, I suppose that that is what induces nine hundred and ninety-nine people out of one thousand to take up stone and timber claims. I don't suppose that there is one in that number that expects to hold or keep their timber claim, either to chop the timber down or saw it up for logs. It was my idea then, and it is to-day that there is not a better investment in the world than an investment in timber lands. If a person is able to hold, the longer they hold, the better the investment. I have just taken up a claim myself, and I was of that impression; and I presume—in fact, I knew, we had talks—numerous conversations along that line, that timber lands were a good investment. But that there was anything ever said in any way, shape, or manner, that I would buy their land of them, or that they would sell their land to me, is absolutely false, and nothing was ever talked of with them in that respect.

Q. Well, didn't you tell them in the conversation as to who they could sell to?

By Mr. BICKFORD.—We object to that as not being

(Testimony of R. M. Cobban.)

proper cross-examination, and as calling for a conclusion from the witness and not for testimony.

A. No, sir, I did not.

Q. Or that you thought that you would find a buyer for them? A. No, sir.

Q. And so far then, as anything that passed between you and them, was concerned, they were to take up these timber claims with money that you supplied, in whole or in part, with the expectation on their part, that they were to hold it indefinitely?

A. Well, I don't know that it was their expectation to hold it indefinitely, but there had been nothing directly or indirectly said between us that I would buy it, or that I would furnish a customer in any way, shape or manner. I don't suppose that they had the idea that they would have to hold that land for any great length of time in order to make a sale.

Q. Why do you say that?

A. Because there have been numerous sales, and the timber was advancing all the time in price, and sales had been made; and I don't think that they expected to hold the land forever. But certainly there was nothing said by me that would lead them to infer that I would buy the land of them.

Q. As a matter of fact, it was during this year that they were visiting you at your home, that you were making these purchases all the time, from these various entrymen and entrywomen, was it not?

(Testimony of R. M. Cobban.)

A. I made a great many purchases during the year, yes, sir.

Q. Well, wasn't that talked over in your home?

A. It certainly was; they certainly were familiar with my business, and anything that I was doing, and they knew that I was handling timber lands all the time, yes, sir.

Q. And they knew that you were buying the same kind of claims that they had?

A. Well, we didn't try to keep any secrets of that kind. I don't know why we should.

Q. Well, if this knowledge was brought to them in this way, and they had this knowledge, wouldn't that be the basis of their expectation, that they would sell to you?

A. No, sir, I don't know that they had any expectation about selling to me at all. But as I have said before, I believe that an investment in timber lands was as good an investment as anything; and they have been anxious for years to take up claims and avail themselves of their rights.

Q. Now, Mr. Cobban, I read from the record, volume 2, page 92, the final proof was taken before me (this being the testimony of Elmer E. Hershey) in the case of Elvira M. Hardy, on the 10th day of November; and also in the case of your father in law, John H. Hardy on the 10th of November. I also find that on the next day after they conveyed the claims to you. That is within twenty-four hours after they had obtained the

(Testimony of R. M. Cobban.)

receiver's final receipt, and the money was paid into the land office. Now, please tell me just what time the negotiations between you commenced, after the final proof was made?

A. Well, I don't remember just what hour, or when it was, but after their final proof was made, I wen to them and I told them that if they wanted to sell their land that I would give them so much for it. I didn't advise them in the matter. They were undecided at first whether they would take that or not, or hold for better prices. I made them as good an offer as I possibly could, on the land and they thought that under the circumstances they would accept it.

Q. And whether that was on the same day that they proved up, or the next day that they conveyed to you, that you spoke to them in regard to this, you don't know? A. No, sir, I do not.

Q. Do you know where you were at the time that you had this conversation with them, Mr. Cobban?

A. I presume that I was in my home, and yet I am not certain.

Q. Well, what you say—you offered them as good a price as you could. What was your offer?

A. I made them an offer of $1,500.00.

Q. And that would be about a profit of $300.00, on the two descriptions, over and above the price, and the expenses, would it not?

A. Well, I don't know. I haven't figured it out.

(Testimony of R. M. Cobban.)

Q. You have figured it out enough to be familiar with that proposition. The price of the land was $400.00 for each claim, and that is $800.00; and about $50.00 apiece for expenses.

By Mr. BICKFORD.—We move to strike out the statement of counsel as being no question asked of the witness.

Q. What is it, Mr. Cobban?

A. In their case the price of the land was something over $400.00. Their claims were more than 160 acres each.

Q. How much more?

A. I think there were 170 and some odd acres in each one of the claims.

Q. So that would be at the same price—$2.50 per acre? A. Yes, sir.

Q. So that would bring the purchase price up to between nine hundred and a thousand dollars, just the purchase price alone?

A. Yes, sir, something like that.

Q. So that the expenses in the two cases were a hundred dollars, and that would be in round numbers a thousand dollars; an advance of $500.00, would be a profit of $250.00 in each case?

A. I suppose so, you can put it in that way if you want to.

Q. And that is what they accepted as their profit in the deal, is it?

(Testimony of R. M. Cobban.)

A. That is what they accepted for their land, $1,500.00.

Q. Well, how much money did you pay them, in fact, after the payment was made into the land office and all the expenses were deducted, how much did you give them?

A. I think they paid all their own expenses. I don't think I had anything to do with their expenses in any way; and I paid them $1,500.00, less what sum I had previously loaned them.

Q. If, as a matter of fact, you paid for the entire purchase price, it would be the balance that was left, after deducting that from $1,500.00.

A. Yes, sir.

Q. Did you give it to them in currency?

A. I have no recollection now whether I did or not. I presume I gave them a check, but I am not certain.

Q. Do you remember when you paid them, whether you paid them in the form of a check or in currency?

A. No, sir, I do not.

Q. Can you recall any of the facts and circumstances attendant upon the delivery of the money over to them?

A. Not for certain. I think that I gave them part of the money then, and the balance when they returned East. That is my impression now, but I am not certain.

Q. If you are not certain when you paid them, or

(Testimony of R. M. Cobban.)

how you paid them, how are you able to be certain that you paid them at all?

A. Well, it is very clear in my mind as to the amount that I paid them for their claim.

Q. Well, how much was the amount?

A. One thousand five hundred dollars.

Q. Well, how much did you pay them personally?

A. I have told you several times that I couldn't tell you from memory. I didn't know just what the amount was. But the consideration for their claim was $1,500.00.

Q. You have not—it would certainly not amount to —what you paid in the land office wouldn't amount to $1,500, would it?

By Mr. WALSH.—We object to the assumption of counsel that the witness has testified that he paid money into the land office, when the testimony is that the money was paid into the land office by the claimants themselves. It was three or four times that this assumption has been indulged in by counsel, and we want it to go upon the record that we object to such assumption upon the part of counsel.

By Mr. MAYNARD.—There is no misunderstanding about it; the money was paid into the land office either by the claimants or by the witness.

By Mr. WALSH.—Well, as far as the Hardy cases were concerned, it was paid in by them.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—Now, the witness admits that the amount of money that was paid in, whatever it was, that was paid in, was deducted from the amount, that was paid in currency.

By Mr. BICKFORD.—No, he hadn't admitted anything of the kind.

By Mr. MAYNARD.—That was paid in currency to the entrymen, and it would be their profit in the transaction.

By Mr. BICKFORD.—No, there wasn't anything said about currency at all. The witness has not stated that he paid for the land in currency.

Q. I am talking about the amount that was paid by you to your father and mother, by way of profit, not the amount that was paid to them by way of a loan, which enabled them to pay for the land.

A. I don't think there was anything said about what their profit would be in the transaction at all. It was simply considered a fair price for their claim; that is, $1,500.00, and in the settlement they were paid $1,500.00 less the amount that I had loaned them previously.

Q. But just how that was paid, the balance, you don't know how it was paid, or anything about it?

By Mr. WALSH.—He has already testified to that absolutely upon the record.

Q. Now, I ask you if you have any recollection of any fact or circumstance, as to how and when you paid

(Testimony of R. M. Cobban.)

them at the time of the settlement, and how you are certain that you paid them at all?

By Mr. BICKFORD.—That already has been answered, that very same question.

By Mr. WALSH.—You needn't mind answering that question, Mr. Cobban, it has already been answered.

By the EXAMINER.—Well, if there is any misunderstanding on the part of counsel, he is entitled to an answer. Sometimes a question is put two or three times, and answered, and counsel is not fully satisfied with the answer.

By Mr. MAYNARD.—What I desire to say, Mr. Examiner, is that he paid them a certain amount of money, but he has no recollection as to when this money was paid, or how, or under what circumstances it was paid, and I want to know how he is able to state that he paid them any amount of money at all.

By Mr. WALSH.—And our statement is that the question has already been asked and answered by the witness.

By the EXAMINER.—Mr. Maynard does not seem to be fully satisfied about the matter. Let the witness answer the question.

By Mr. MAYNARD.—I will withdraw that question now.

Q. Mr. Cobban, how much money did you pay them

(Testimony of R. M. Cobban.)

at the time of the settlement, and give to them at the time you made the loan?

A. I have stated several times, and made it just as clear as I know how, that I don't know. I know that the amount of $1,500.00 was paid them, less the amount that I had previously loaned to them. I have stated several times why it was that I was not certain as to the amount I had loaned to them; and I am not certain just when this payment was made, but I think a portion of the money, at least, was paid shortly—about the time that they signed the deed.

Q. Well how much was that, in your judgment?

A. Well, I am not certain, it is not clear in my mind as to the amount that was paid to them then, other than this, that I know the amount contained in there is the true consideration for the deed, and that it was the amount that was paid to them.

Q. Had you made them any loans other than the loan that was covered by this land transaction?

A. No, sir.

Q. So they were not owing you for anything other than the indebtedness which came to you out of this real estate transaction then? A. No, sir.

Q. So that the balance was paid to them by you either in the form of currency or by check?

A. Yes, sir, or both.

Q. Or both? A. Yes, sir.

Q. And before they left Missoula?

(Testimony of R. M. Cobban.)

A. Yes, sir.

Q. And that was part of the land that you afterwards conveyed to the defendant in this case?

A. Yes, sir.

Q. I next call your attention, Mr. Cobban, to the case of the entryman, George P. Jemison, do you—have you any personal acquaintance with him?

A. No, sir, I know him by sight, that is all—just by sight.

Q. Can you recall any of the facts and circumstances connected with your transaction with him?

A. No, sir, I cannot. There were—I was very busy during that summer, handling a great deal of property and while I know that I purchased land of George P. Jemison and I know the man by sight, yet, the circumstances connected with that I cannot tell. I don't recollect it.

Q. What acquaintance had you with him previous to your purchase of the land?

A. Well, I don't think I had ever seen him until that season, and have never had but very little conversation with him; don't know him very well.

Q. Did you have any acquaintance with his wife?

A. No, sir.

Q. Did you have any acquaintance with Joshua C. Gilman? A. I knew him, yes, sir.

Q. What is that? A. I knew him.

Q. And with Lavina C. Gilman, his wife?

(Testimony of R. M. Cobban.)

A. Not until the season of 1899.

Q. Now, if it is true that Albert Jemison located George, and that Mr. Griswold gave him the numbers of the land—that is, the description of the land, and the witnesses, and instructed him to go to your office, and that Mr. Catlin paid the money into the land office for him, and that he immediately went back on the same day to your office, and that you paid him $120.00, can you explain that transaction? Does this refresh your recollection in any way?

A. Why, I hardly know what the question is there in that case. As to refreshing my memory, I don't know that what you have stated has refreshed my memory particularly. I know I bought some land of Mr. Gilman and his wife during that season.

Q. Have you any recollection respecting the facts and circumstances connected with that purchase of Mr. and Mrs. Gilman's claims?

A. No, sir, I don't know whether I made the purchase myself, or whether it was made by someone in the office for me.

Q. Well, you are able to state as to whether or not that was part of the general scope of the work that you were doing through Mr. Griswold, that you were to locate these people for one hundred dollars?

A. Well, what do you mean? Do you mean that we were to charge them a hundred dollars?

Q. Yes.

(Testimony of R. M. Cobban.)

A. In some instances there was an arrangement by which—

By Mr. WALSH.—Mr. Cobban, the question is, whether you knew anything about this case.

A. No, sir, I don't know whether those people were to be charged $100.00 or not, but I don't think there was anything of that kind; although I am not certain.

Q. Well, you bought this land from Mr. Jemison and his wife, and he has testified in regard to the matter, and yet—you have a personal recollection in regard to a part of this case, and I didn't know but what possibly you had some recollection as to how you came to buy this land. That was all.

A. I was in the market to buy any land that was offered to me, that had a title, during that season. Any land that was properly situated, and I know I did buy that land. I know that there was no prior arrangement or agreement between those parties and myself that I would buy this land, but just the things surrounding that transaction now, I cannot tell. Sometimes these people came to me directly to sell their claims, and I bought them. Other times, if I was away, they came to my employee, in the place, Mr. Pound, and Mr. Pound would buy them. Whether in this instance, I bought those claims, or whether Mr. Pound did, I am not certain.

Q. Well, what were the instructions that you had

(Testimony of R. M. Cobban.)

given this man in your office in regard to buying these claims during your absence?

A. Well, it was usual, if I was to be away, I usually told Mr. Pound that if he could buy certain claims, for so much money, he could buy them. Unless he had some knowledge about what he could pay, he never bought lands without consulting me in some way.

Q. To buy the claims for so much money; what do you mean by that?

A. Well, as a rule, I knew about—I was having estimators in the field, and I knew about how much timber was on the different pieces of land. I knew about what they were worth, those lands, and that they would be worth about so much to me if I could secure them, for a certain figure, that they would be worth that much to me.

Q. And who did you authorize to buy if they could buy it at the figures that you named, besides Major Pound? A. No one else.

Q. Is he still working for you? A. Yes, sir.

Q. Major Catlin didn't have that authority?

A. No, except on special occasions when he came to me and spoke to me about it. Then I told him he could offer so much for it.

Q. In particular cases? A. Yes, sir.

Q. Mr. Dinsmore had nothing to do with that branch of the business?

A. Mr. Dinsmore had very little to do with the timber lands.

(Testimony of R. M. Cobban.)

Q. So, then, as a matter of fact, it is true, is it not, as you say, you had estimators in the field, estimating this timber, and you had Mr. Griswold, and Mr. Jemison, that was working for him, and other men in the field, fixing these locations, and that the instructions that you gave Major Pound were, that when these entrymen and entrywomen came in with their data for Mr. Griswold or Mr. Jemison identifying the land and so on, that they—he could buy it at a certain figure?

By Mr. WALSH.—Now, we move to strike out the statement of counsel as not being the correct statement of the witness, and as being facts that the witness has not testified to, and as being contrary to statements made by the witness.

Q. Isn't that statement of fact, that I have given you, substantially true, Mr. Cobban?

A. No, it is not.

Q. Well, as a matter of fact, a large number of persons did come to your office, with memorandum from Mr. Jemison and Mr. Griswold containing the descriptions of the land, and the names of the witnesses, did they not?

By Mr. WALSH.—We object to that for the reason that the memorandums themselves are the best evidence of what they contain.

A. There were numerous parties came with the request to have their papers made out.

Q. Made out for filing? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Made out for filing on data that was furnished by Mr. Griswold and Mr. Jemison?

A. Well, I cannot say as to that. I think in some instances they may have come in in that way.

Q. Well, now, I read from the record at page 1764: "We looked it up and run out the corners, and fixed the numbers of the section and the township and so on, and came back. I believe it took us a day to do this. I believe then I went up one day and seen Griswold, and he came down and looked over the land. So that we would make no mistake, I believe he gave us the numbers of the section, the quarters, and so on. Albert told me to inquire for Densmore and Cobban's office?

Q. Who did?

A. Albert Jemison—to empl . him to do my business. So I went there, and he made out my papers. I then went over to the land office and filed. I think I done some other business after this and then went home. He attended to all the business.

Q. Who attended to it?

A. Mr. Cobban, I believe.

Q. What do you mean by 'attended to all the business'?

A. Why, to the advertising and writing out my papers. The witnesses were with me of course when I was up there, Gilman and Eddy. Eddy didn't go with me but he was up there, but Gilman and his wife went with me up there."

(Testimony of R. M. Cobban.)

Q. Now, have you any recollection as to whether it was you who attended to this man's business or not, after hearing this testimony?

A. No, sir, I am not certain as to that.

Q. Well, if it was true that these papers were sent by Albert, and the land was looked over by Mr. Griswold, that was in pursuance of their employment with you, was it not?

A. I had nothing to do with Jemison's employment by Mr. Griswold.

Q. That was an independent matter of Mr. Griswold's, was it?

Q. I read from page 1765, being in volume 4 of the record in this case: "I believe Mr. Cobban was gone then when I done my business—attended to my business. The time came to prove up, and I watched the papers and went down to prove up It was with Catlin, I believe. We went to the land office and gave in our testimony. Catlin, I believe taken the money over, and paid for the land, something like $420.00 I think.

Q. Well, what did you do next?

A. I went back to their office and sold to them.

Q. Sold to who?

A. The papers was made out in Cobban's name. Catlin and Pound, I believe, done the business.

Q. And you received some money from Mr. Catlin?

A. Yes, sir.

Q. How much?

(Testimony of R. M. Cobban.)

A. I figured up my expenses, I believe, and they offered me $120.00 for the claim.

Q. One hundred and twenty dollars?

A. Yes, sir, and the expenses I have been to, the advertising and everything, and I took it.

Q. And then you went home? A. Yes, sir."

Now, was that money paid for that land, by reason of instructions that you had given?

By Mr. WALSH.—We move to strike out the statement of the counsel as being a repetition of the testimony given by the witness, George P. Jemison, upon the ground that it is irrelevant and immaterial, and simply incumbering the record.

By Mr. MAYNARD.—I read the testimony referred to simply for the purpose of refreshing Mr. Cobban's recollection, if possible, so that he may be able to recall his connection with the case, if he can.

A. Well, I—

Q. Well, the question is about this money, Mr. Cobban; let us try to get at this matter.

A. As I stated before, in this particular case, I don't recollect the details, but I did give, in a number of instances, and I presume this may one of them, the instructions to Mr. Pound, that if that land could be purchased for a certain sum, after it was proven up on, that he could buy it for me for such a sum. If not, then whenever there was a loan made he was to secure it by mortgage, and that was given to me in my absence.

(Testimony of R. M. Cobban.)

I gave him these instructions, so that he would know just what to do.

Q. And he was to add the $100.00, was he?

A. He was to add whatever in the particular instance was to be added. Whether in Mr. Gilman's case there was $100 I am not prepared to say.

Q. I thought that you testified that in each and every case where you made the loans, it was with the express understanding that the locations, rather—that it was in consideration of the $100.00 that you were to receive.

A. I don't think it was considered always $100.00. There was some loans made, I think, where there wasn't $100.00; but as a rule that was the case, that there was to be $100.00 paid for the location.

Q. But in these cases—in this case of Jemison's that we are now considering, from his testimony it appears that the location was made by Albert Jemison, and the examination was made by Mr. Griswold, and the result of that was communicated to your office, and the filing was made, and all the work done by men in your office, and on the same date that the final proof was made he conveyed to you, and got the $125.00. Now, where did the consideration for the services that your men had rendered him come in?

A. Well, I cannot say now, but it is very certain that he was to pay us something for any services that we rendered him. That Albert Jemison, my recollection is—

(Testimony of R. M. Cobban.)

Q. George P. Jemison?

A. —that Albert Jemison, my impression is, that quite number of those people, he charged them ten dollars apiece for his work. I had nothing whatever to do with anything of that kind at all.

Q. Well, why should he send them to your office?

A. Most of them, there was an understanding, by which they were to be charged so much, and I presume Mr. Jemison was one of them. But you are asking me to testify about something that I am not positive about. I am not positive and I cannot tell you. Three years is a long time with a busy man that has got so many things to try to keep track of, and I haven't tried to keep the details in my mind about these matters, and it is impossible for me to remember them.

Q. Mr. Cobban, I don't wonder at that; but I am not asking now in regard to the details, but the question I ask you is, how it came that Mr. Jemison sent these men—and the record shows that he did send a good many others besides, how he came to do that?

By Mr. BICKFORD.—We object to that because the witness is not supposed to know, or is called upon to answer with reference to the motives of others, and it is not proper cross-examination.

A. Oftentimes Mr. Griswold was working for me, and the arrangement with Mr. Griswold and myself was that he could locate any parties who came to him and wanted claims, by charging them a hundred dollars apiece where loans were to be made by us—where we

(Testimony of R. M. Cobban.)

were to make loans. If the parties were all right, and good parties, we would make a loan. Sometimes parties came in with a slip of paper asking that papers be made out for them, and they were made out with the supposition that Mr. Griswold had made that arrangement with them, to charge them a hundred dollars apiece; and these things were not gone into by me when that was the case.

Q. If he had carried out your instructions?

A. Yes, sir.

Q. That he was to have an express understanding with them that when he was sent by—when they were sent to your office for the purpose of having this business done, and getting the loan, that the hundred dollars was to be counted in?

A. Yes, as a rule I had a talk with the people that we located, as to that, so that I would understand myself about those things. But sometimes they would come when I wasn't there, and the papers would be made out by someone else, and in that case it was expected, and understood.

Q. So that it would be unnecessary to go into all that conversation with regard to it? A. Yes, sir.

Q. And then, as a matter of fact, you know at this time, that Albert Jemison was working for Mr. Griswold in pursuance of this arrangement that you had made with Mr. Griswold, and that you would recognize his papers that he sent in, just the same as Mr. Griswold.

(Testimony of R. M. Cobban.)

By Mr. WALSH.—We object to that because it is not the testimony of the witness, at this time, and the time referred to by counsel that Albert Jemison was working for Griswold, or that there was any understanding whatever with reference to accepting the memorandum or papers of Mr. Jemison; but, on the contrary, the testimony shows that at this time Albert Jemison was not working for Mr. Griswold.

Q. Well, whether he was working directly for Mr. Griswold or you, yourself, personally, it is immaterial to me. You would recognize the papers that were sent in just the same as you would the papers from Mr. Griswold?

A. We would recognize any person coming in, and asking for our services in making out the papers. We would make them out for any person.

Q. Well, now at the time that this entry was made by George P. Jemison and his wife, Recy M. Johnson, Recy M. Johnson deeded the land and received the same amount of money, namely, $125.00, final proof being made September 29th, 1899; and on the same day they joined in a deed to you and received $120.00 apiece. Have you any recollection of that at all?

A. I have no clear recollection—

Q. What is that?

A. I have no clear recollection of the transaction.

Q. And in the same—and at the time the locations of George P. Jemison and Recy M. Jemison were made, at the same time Joshua C. Gilman and Lavinia I. Gil-

(Testimony of R. M. Cobban.)

man and William Eddy made their locations—five locations were made at the same time. Now, have you any recollection as to the Gilman or Eddy location, or any transaction that you had with Mr. Gilman in regard to the purchase of the land that he entered, and his wife entered?

A. Yes, sir, I have. These locations came late, and I had considerable conversation with Albert Jemison about some of those things; and now that the date is fixed, Albert Jemison, as I understand it, and as I remember it, wasn't working for Mr. Griswold at all at that time.

Q. In the fall—

A. —and he spoke to me about some of his friends—some people wanting to take up claims, and he discussed the proposition of being able to borrow money for their locations—for proving up on their locations. I told Mr. Jemison at that time that to any responsible party, parties that he knew were responsible—that we would loan them the purchase price, provided the timber claims that they took up were good claims; so that they would be good security, and at that same time, and at a number of times, it was discussed with him that he should charge $100.00, and that it would be counted in as the purchase—as money advanced by us in the money that would be given them.

Q. In case you didn't buy it of them?

A. There was nothing said about our buying them, except this; Mr. Jemison was given at that time particular

(Testimony of R. M. Cobban.)

instructions that he should not in any way give these people to understand that we would buy the claims. There was to be no information and no talk of any purchase of the claims by us.

Q. Who gave them that particular instruction?

A. I did, personally.

Q. Now, what did you say to him?

A. I have stated that.

Q. Well, you have stated your conclusion about the matter; just tell me your words to him.

A. That is practically what I said. I have given you the gist of the conversation. I don't remember the exact words that were used, but the proposition came up here that—there had been numerous persons coming in to know what a claim was worth, and sometimes before it was taken up. There isn't a week passes right now but what people come to me, and have been for years—to try to sell claims before they take them up; and because of the numerous inquiries of that kind that come in, I insisted that there should be no cause for complaint; that there had been a prior agreement, and it was on that account that Mr. Jemison was cautioned that he should not in any way hold out any inducements that we should buy the land.

Q. Because you understood it was against the law, and you didn't want to violate the law?

A. I certainly didn't want to violate the law, or have anyone else violate the law.

Q. So what you wanted to do, then, was, to so instruct Albert Jemison that he could be able to instruct all of

these entrymen and entrywomen that he had to do with, so that you could keep within the letter of the law, and still have them fully understand that you were to buy the land from them, and that they were to enter it, and take up the land for that purpose?

A. No, sir; there wasn't any such instruction, and no such intention whatever. There was no person that was under any obligation to convey their lands to me; and I wanted it strictly and clearly understood that they were under no obligations in any way. And that was one reason why I wanted the instructions given in that way, that they couldn't hold—that they couldn't understand it that way. I wanted it to be clearly understood that they were not taking this land up for my benefit.

Q. Because that was against the law, and you didn't propose to lay yourself liable to the law, but you were willing to accomplish the same thing, by instructing Jemison, to let the people know that there was not to be any such understanding, but at the same time they were to understand in a general sort of a way that they were to deed the land to you after making final proof.

By Mr. WALSH.—You needn't answer that, Mr. Cobban—wasn't that the case?

By Mr. WALSH.—Now, you can answer it, Mr. Cobban.

A. It was positively not the case; and it is not a fair proposition to put it in that way.

Q. I read, now, from the record, Volume IV, at page

(Testimony of R. M. Cobban.)

1781, from the testimony of George P. Jemison. Listen to this, now, Mr. Cobban: "Q. Had you seen anybody in regard to this land, in regard to selling it to anybody except to the Cobban people?

A. No, sir.

Q. You expected to sell to Mr. Cobban, did you not?

A. I did, sir, when I got my final proof.

Q. When you got your final proof, you planned to sell to Mr. Cobban? A. Yes, sir.

Q. You knew how much you were to get, did you not?

A. No, sir.

Q. You did not? A. No, sir.

Q. Nothing said to you about that?

A. No, sir.

Q. By anybody? What is your answer?

A. No, sir.

Q. The subject matter of how much you were to receive from Mr. Cobban never was spoken of to you in any way?

A. No, sir.

Q. Who told you that you were to sell to Mr. Cobban?

A. Nobody.

Q. Nobody? A. No, sir.

Q. When did you find out that you could sell to Mr. Cobban?

A. When I went from the land office over to his office.

Q. After you had proved up? A. Yes, sir.

Q. And do you wish to be understood as swearing that that was the first time you knew anything about the fact that you were to sell to Mr. Cobban?

(Testimony of R. M. Cobban.)

A. I wish to be understood that I asked no questions.

Q. You understand that you were to ask no questions? Who gave you to understand that you were to ask no questions? A. Albert Jemison.

Q. Where was Albert when he gave you so to understand? A. I couldn't say where he was.

Q. Up in the mountains?

A. I wouldn't be positive.

Q. You wouldn't be positive. What do you mean, that you cannot exactly locate the place?

A. No, sir, it was there; some place up there.

Q. Up there in the mountains? A. Yes, sir."

Q. Now, I ask you in the light of that testimony, when he says that he understood from Albert Jemison that he was to ask no questions, whether or not that instruction was not given to Albert Jemison by you?

A. No, sir, it was not positively, and nothing of that kind.

Q. And when you say that you were so particular to instruct Albert Jemison, wasn't it along that very line?

A. No, sir, it was not.

Q. That while he was to—while he could not, and keep within the law, have this arrangement, that he must so work it that it would be carried out just exactly the same as if the arrangement had been made. Wasn't that your instruction to him?

A. No, sir, it was not, positively.

Q. And that these people, and each and every one of

(Testimony of R. M. Cobban.)

them were so informed by Albert Jemison, that they were to keep their mouths shut and do business?

A. What Mr. Jemison's instructions to these people were, I know nothing about that; but I know what my instructions were to Mr. Jemison.

Q. Well, if you were in the market to buy timber, and that is your business, and that these people—and that you wanted to buy timber, that these people were holding, how were you going to carry it out unless you had some arrangement with Jemison that the people he selected were to sell to you?

A. Well, it is true that I was in the market to buy timber, but I was not in the market to violate the law in any matter of that kind. If, after these people had a title and wanted to sell, if I was still in the market, I would buy. I didn't know at that time that I was going to be in the market sixty days ahead. That is my business, and if I was buying timber at that time, and a person should come to me with a good title, I would certainly be apt to make them a bid for it.

Q. If these instructions hadn't been given by you to Albert Jemison, and they hadn't been finally carried out by him, how do you account for the fact that immediately as this record shows, in the cases of George P. Jemison and his wife, and many others, that they immediately went from the land office, after they had made their final proof, and sold their claims to you?

A. These people, a number of them, had borrowed their money from me to make their proofs. They had to come

(Testimony of R. M. Cobban.)

to me to make their settlement, and to fix up their mortgages, and when they did that—when they came there after they had received their receiver's final receipt, if I believed they had a perfect title, and they had a perfect right to sell, then it was, and not until that time, was there any offer or any proposition to buy of them in any way, shape or manner. Those people were at perfect liberty to do, then, whatever they pleased with their claims, hold them or sell them to any person as they pleased, except to secure me for the money I had loaned them.

Q. That wasn't true. If there was an implied understanding and an agreement as far as you could have one, without violating the law; these people were to immediately convey to you, immediately after making their final proof; and how do you account for the fact that when you say they returned to your office to make the mortgage for the land, that they did in every single instance, instead of making the mortgage, convey their land to you?

A. Well, I presume I was paying the full value of the timber, and that those people were satisfied that they would rather sell to me, and take what money I offered them, than to mortgage. There certainly was no agreement or understanding that they should sell.

At this point a recess was taken until two o'clock P. M. of the same day.

HENRY N. BLAKE,
Examiner in Chancery.

R. M. COBBAN, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Before recess, Mr. Cobban, I was calling your attention to the entries—to the transactions that you had with George P. Jemison and his wife, Mr. and Mrs. Gilman and William Eddy, and called your attention to the fact that George P. and Recy M. Jemison swore that they got one hundred and twenty dollars for their land apiece. I now show you Complainant's Exhibit No. 33, being their deed to you, and ask you how it happened that the consideration or price was named in the deed as two thousand dollars?

A. Well, that is very often done, a different consideration from the actual consideration.

Q. Well, that was not the actual consideration?

A. No, sir.

Q. Is that true of all of these deeds that were made to you by these different entrymen and entrywomen that are named in the bill of complaint?

A. No, sir. Well, I would have to see the deeds and know in order to answer that question. I know often times the consideration named in the deed was not the actual or the true consideration, and a great many times it was the true consideration, as, for instance, in the Hardy deeds to-day; it was the true consideration there; very often it was.

Q. But was that left largely to the discretion of the draughtsman? A. Yes, sir.

Q. And that would be true in this case of Complain-

(Testimony of R. M. Cobban.)

ant's Exhibit No. 19, of Joshua C. and Lavinia I. Gilman? A. Yes, sir.

Q. Now, I understood you to say this morning that you had some present recollection as to your dealings with Mr. Gilman. Have you or not?

A. No, sir, not over this transaction; nothing definite.

Q. Had you known him at all?

A. Yes, I knew Mr. Gilman by sight and had seen him a number of times, and knew who he was; that he was a rancher up in the Bitterroot valley.

Q. And did you know his wife, Lavinia?

A. No, sir.

Q. Do you know that she was a sister of Albert Jemison?

A. I did not, not at that time; no, sir.

Q. So you had had no dealings with him prior to this time? A. No, sir.

Q. And just what the facts and circumstances were which led up to the conveyance to you, you have now no present recollection?

A. Well, only in a general way, as the business was conducted there, as to the manner in which I made purchases from a number of people at that time.

Q. And that was substantially as you testified this forenoon? A. Yes, sir.

Q. For the purpose of refreshing your recollection, I read from the record, page 1470, from the testimony of J. C. Gilman:

"Q. Had you had any business with Mr. Catlin or had

(Testimony of R. M. Cobban.)

any talk with him? A. He was out of town; I did not get to see Mr. Catlin at that time. Q. Who did you have the talk with? A. Mr. Cobban. Q. Whereabouts? A. In his office. Q. Are you able to say as to whether it was before or after you went to the land office? A. No, sir, I am not able to say about that. Q. Was it on the same day? A. Yes, sir, I think it was on the same day. Q. And the persons you have named were with you? A. Yes, sir. Q. What did you say to him? A. I asked him in regard to borrowing. Q. Go on now and give us the conversation. A. I don't know that I could go to work and tell the conversation in detail, because I couldn't recollect that. I asked him if it would be so that I could borrow the money of him provided I needed it when I came to prove up on my land and he said he thought he could accommodate me. That is all there is to it as near as I can remember that was said to me."

Do you remember having a conversation with him like that?

A. I don't remember having the conversation, but I have no doubt but what we did have a conversation of like—something of that kind, because in advancing the money to these people I invariably had an agreement with them—I say that myself or Mr. Pound had, in regard to their loan.

Q. I read from page 1473 of this man's testimony:

"You say you went and proved up; that is, you gave your testimony? A. Yes, and paid my money and got my receipt. Q. How much money did you pay in? A.

(Testimony of R. M. Cobban.)

I think it was four hundred and some odd dollars. Q. From whom did you get that money? A. Got it from Mr. Cobban. Q. How, before you went to the land office?"

A. Well, we got it the same day.

Q. What time did you go to the land office?

A. I don't remember what time we went to the land office; some time in the forenoon.

Q. If it was the same day you went to the land office in the forenoon, you got your money from Mr. Cobban the same day?

A. I don't know.

Q. You had not seen Mr. Cobban before this at all?

A. No, not from the time we filed till the time we went down and proved up; I didn't see him till we proved up.

Q. I mean between the two dates?

A. Never did see him.

Q. Where did you get this money there; did you go to Mr. Cobban's office?

A. Yes. I didn't get it from Mr. Cobban himself; I think a man by the name of Pond issued the check; I think Mr. Cobban was out of town that day.

Q. Did you see him at all on the occasion of the second visit to Missoula at the time you proved up?

A. Mr. Cobban, no, sir.

Q. You say he was out town at the time you went, and you went to his office and got the money from Mr. Pond? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. He gave you a check for so much money?

A. Something over four hundred dollars; I don't just remember."

Q. Now, then are you able to state as to whether that is true or not?

Mr. BICKFORD.—The testimony shows that Mr. Cobban was not present, and possibly he would not have any knowledge concerning it.

Mr. MAYNARD.—He might have made some investigation since.

A. No, sir, I am not certain. I know, however, that there must have been some conversation with him either by myself or by Mr. Pound in regard to the loan before making it; I presume that Mr. Gilman is correct in his statement.

Q. I read further:

"Q. Did you turn that check right into the land office? A. I don't recollect whether I did in person or not; if I didn't, my attorney did. Q. Who was your attorney? A. Mr. Catlin was doing the business for me in the absence of Mr. Cobban. Q. You cannot say then as to whether or not you took this check that Mr. Pound wrote out, or as to whether Mr. Catlin took it and paid it in? A. I think probably Mr. Catlin handled it; I think I handed it to him. He was doing the business for me; he was my attorney in the affair. Q. And your wife was along? A. Yes, sir. Q. And then, immediately after you proved up through Mr. Cat-

(Testimony of R. M. Cobban.)

lin, your attorney, where did you go? A. I think we went to dinner. Q. You deeded your land to Mr. Cobban that same day, didn't you? A. Yes, sir. Q. Whereabouts was that done? A. That was done in Mr. Cobban's office. Q. How much money did you get for that? A. For the land—what I got out of the land? Q. How much did you get when you deeded the land? A. Why, he was to pay me one hundred dollars. Q. And your wife got a hundred? A. Yes, sir. Q. That is all you got out of the transaction from the beginning to the end, isn't it? A. Yes, sir."

Now, what have you to say about whether that is true or not, when he says he was to pay me one hundred dollars?

Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and the counsel is calling for a statement of the witness concerning a large quantity of testimony read to the witness, without directing his attention to any particular part of it, and evidently for the purpose of trying to confuse the witness and to obtain from him an admission concerning facts that were read in the early part of the reading, and not called to his attention at this time.

Mr. MAYNARD.—In answer to that, I desire to say that I read this extract from Mr. Gilman's testimony for the purpose of giving Mr. Cobban clear information as to just what the testimony was, and as leading up to the two questions: "How much money did you get for

(Testimony of R. M. Cobban.)

that? A. For the land—what I got out of the land? Q. How much did you get when you deeded the land? A. Why, he was to pay me one hundred dollars." Now, then, I call Mr. Cobban's attention specially to these two answers of Mr. Gilman.

Mr. BICKFORD.—We make the objection that the witness has already testified that he was not present at this time, and the testimony shows that the witness now on the stand was not present at that time and consequently can have no personal knowledge as to the transaction testified to by the witness whose testimony has been read.

Mr. MAYNARD.—My answer to that is this, that the witness swears that when he came to file on the land he saw Mr. Cobban and made arrangements then in regard to receiving money from him, and that it was in consummation of the agreement which he then made with Mr. Cobban that the deed was made by Mr. Gilman and his wife and the money paid over by Mr. Pound, in the absence of Mr. Cobban, who had received instructions from Mr. Cobban to pay this amount of money.

Mr. BICKFORD.—To that we answer that there is no such testimony given as that by Mr. Gilman or by the witness now upon the witness-stand, that there was any bargain or agreement made either at the time when the party filed or at any other time which resulted in any consummation or any deed from the party to Mr. Cobban, but that the testimony of the witness now under

(Testimony of R. M. Cobban.)

cross-examination is to the effect that there was an agreement whereby the witness agreed to loan money with which to make final proof.

A. In answer to Mr. Gilman, I do not think he intended to state that he was to get one hundred dollars, that it was a prior agreement, but that after the conversation with me and after he had proven up and after I had made the bargain he was to receive one hundred dollars, and there certainly was no agreement with him that he was to have one hundred dollars prior to his proving up; no agreement of that kind had ever been entered into with him.

Q. But he says, Mr. Cobban, that the only conversation that he ever had in his life with you was the time when he went to see you in regard to the money at the time that he filed—

Mr. WALSH.—There is no question now. Let us not get into an argument.

Q. —And that being so, how is it possible that the agreement could have been made at any other time, when he says that you were not in town at the time that he proved up and conveyed?

Mr. WALSH.—That is not proper cross-examination.

A. Well, there certainly was no agreement between Mr. Gilman and myself by which I was to pay him one hundred dollars or any other sum for his claim before he proved up on his claim; no conversation of that kind ever took place before that time, and I am not certain

(Testimony of R. M. Cobban.)

that I ever had any conversation with him later on in regard to it. But I do say this, that I either had a conversation with him in regard to the loan myself, or some of my employees had, but no one had any instructions to offer him any sum of money for his claim until he had a right to sell his claim after he had proven up, and I do not think that any one ever did.

Q. Do you remember having given such general instructions to Mr. Pound, that he should pay one hundred dollars?

A. No, sir, I never gave any instructions that he should pay anyone one hundred dollars, but in my absence, sometimes before leaving I would say that if he could purchase such claims after the parties had a title, after they were in shape so they could sell, if he could purchase them for so much he could do so.

Q. Did you name the amount? A. Yes, sir.

Q. What was the amount?

A. Well, I could not say in this instance. The claims as a rule averaged from five hundred and fifty to six hundred dollars apiece—as a rule.

Q. So that the amount that he would pay over and above what was paid into the land office and for the expenses would range from one hundred to one hundred and twenty-five or one hundred and fifty dollars?

A. Yes, in that neighborhood.

Q. I will further call your attention to page 1475; "How much did you get when you deeded the land?

A. Why, he was to pay me one hundred dollars. Q.

(Testimony of R. M. Cobban.)

And your wife got one hundred dollars? A. Yes, sir. Q. That is all you got out of the transaction from beginning to end, isn't it? A. Yes, sir."

Have you any knowledge as to how much was paid his wife for this?

A. No, sir, no more than I have just stated a few moments ago, that I presume it was in the neighborhood of from five hundred and fifty to six hundred dollars.

Q. You have your checks with you here?

A. Yes, sir.

Q. Are you able to state whether these people were paid in checks or not? A. Usually they were.

Q. Would you be kind enough to tell me in the morning; in the meantime look it over, Mr. Cobban, please.

A. Yes, sir, if you will give me a slip of paper so as to make a memorandum. The Gilman checks?

Q. The Gilman checks, the George P. Jemison checks and the William J. Eddy checks.

A. Yes, sir.

Q. I read from the testimony of Mrs. Lavinia Gilman, on page 1453, referring to a division with her husband:

"Q. When you got home, how much did he give you? A. Only what I asked for; I asked for one hundred dollars and he gave it to me. Q. Mr. Gilman, when you got home, gave you one hundred dollars? A. Yes, sir. Q. That is all you got out of it from the beginning to the end? A. Yes, sir."

Are you able to state as to whether or not that amount— A. Not without looking up the checks.

(Testimony of R. M. Cobban.)

Q. Whether that was the true amount and just exactly what the circumstances were relative to her receiving it? A. No, sir, I cannot say for certain.

Q. Have you any personal knowledge of William J. Eddy; do you know him at all?

A. Well, I knew of him, but I am not well acquainted with him.

Q. Can you recall now any of the facts and circumstances connected with his deeding his land to you?

A. No, sir, not particularly. I remember Mr. Eddy, I remember seeing him, and I am under the impression that Mr. Eddy made his arrangement for the loan directly with me, and yet, I would not say positively that he did.

Q. He was with this party, you know, that I have already called your attention to, the Gilmans and the Jemisons; it appears that he filed on the land and conveyed the same day, and on page 1701, he says: "I got one hundred and twenty dollars from him; it was Mr. Catlin, though, instead of Mr. Cobban; Mr. Cobban was not there the last day I went down to prove up; it was Mr. Catlin; Mr. Catlin did the business— Q. How much money did Mr. Catlin give you, did you say? A. One hundred and ten dollars." Are you able to say as to whether that is true or not?

A. No, sir, I am not certain.

Q. On page 1702:

"Q. Was that the only money that you had handled or received from Cobban or Catlin from the beginning

(Testimony of R. M. Cobban.)

to the end, one hundred and ten dollars? A. Yes, sir; one hundred and twenty, I believe it was, instead of one hundred and ten; it was one hundred and twenty. Q. That is all you received? A. Yes, sir. Q. All that you handled from the beginning to the end? A. Yes, sir."

You are unable to say whether that is true or not, I suppose.

A. Well, I do not know just the amount that was the consideration for their deed, but I presume in general that that is true, that they sold their claim so that it may have given them that amount over and above their loan.

Q. But notwithstanding the fact that these parties all conveyed to you on the day that they proved up, in your absence, and received from Mr. Catlin or Mr. Pound from one hundred to one hundred and twenty dollars for their deeds, you still say that that was all done without any understanding in your office that they were so to deed and to receive that amount of money?

A. Yes, sir, most positively.

Q. Now, let me call your attention to the entry of Mr. Matthew P. Dunham. Do you know Mr. Dunham?

A. I do.

Q. How long had you known him previous to his conveying the land to you?

A. Well, I had known of Mr. Dunham for some little time, I am of the impression that I knew him some six months before his conveyance to me.

(Testimony of R. M. Cobban.)

Q. Where did you form his acquaintance?

A. I was not intimate with him at all; I knew of him as a hunter and trapper and guide, and I don't recollect just when I first saw him, but I knew of him and had known of him for some time.

Q. You say that you had no acquaintance with him except that you knew there was such a man?

A. Well, I knew the man by sight, and I think that I had met him before that time.

Q. You have no recollection, have you, of where you met him?

A. No, sir, I have not; I think it was in Missoula.

Q. Do you recollect of having any business dealings or any relations with him of any kind?

A. Yes, sir, I did.

Q. Previous to his conveying to you?

A. I had loaned him some money once or twice.

Q. How did you come to do that?

A. Well, just the same as I had done with a great many people there. People very often came to me for little loans; oftentimes absolute strangers will come in, or people that I know a little. I have been perhaps what they call a little 'easy to work,' and I have loaned money oftentimes to my sorrow; not but what in Mr. Dunham's case it was all right.

Q. How much did you loan him?

A. Well, I loaned him fifteen dollars at one time, and I think I loaned him ten dollars at another time; I think I can remember those amounts.

(Testimony of R. M. Cobban.)

Q. Was that with reference to this land deal?

A. No, sir.

Q. Can you recall any of the facts and circumstances connected with this deal at all?

A. In a general way.

Q. Well, what was the general way?

Mr. BICKFORD.—We object to that as not proper cross-examination. If counsel desires to find out anything special about the deal, he should inquire concerning it.

A. I remember Mr. Dunham's coming to the office and stating that he had a timber and stone filing or claim that he was going to file on and wished to file on, but that he would have to borrow some of the money to prove up with, and asking whether or not he could make arrangements to borrow the money if he needed it, and I told him that he could, and I know he did go ahead and make a filing. I don't recollect whether this conversation was before his making the filing or whether it was immediately after.

Q. What were the conditions of the loan; what were they to be?

A. The conditions of the loan were simply at straight ten per cent interest on the money, or one per cent a month, I don't remember which, and my recollection is it was six months' time that he was to have on the loan, to be secured by his claim.

(Testimony of R. M. Cobban.)

Q. How are you able to recall the fact of the six months' time and so on?

A. Well, because six months' time was the time that, as a rule, I agreed to loan the money to the parties, and I think that that was the time designated with Mr. Dunham.

Q. You have no other knowledge or recollection on the subject except the general rule that you had?

A. The general rule, and the general—that is my recollection of it.

Q. Now, let me understand you. Your recollection is that you agreed to loan him how much?

A. A sufficient amount to pay for the entry on that land.

Q. And all of the expenses?

A. The expense of publication and the land office fees, yes, sir; nothing more.

Q. And that you were to take his note for six months, payable at one per cent a month?

A. One per cent or ten per cent per annum, I don't remember which it was, but I rather think in his case it was one per cent.

Q. Did you do that? A. I did not.

Q. Why not?

A. Because after he had proven up I met Mr. Dunham and offered to purchase his claim from him for so much money, or to take a mortgage, which ever he

(Testimony of R. M. Cobban.)

chose to do, and he chose to sell the claim instead, and I bought it.

Q. You bought it on the same day that he proved up, did you not? A. I don't remember.

Q. I call your attention, Mr. Cobban, for the purpose of establishing the fact that it was on the same day, to the record, page 2215. Just look at that, please.

A. October 27th. Yes, sir.

Q. What have you to say, after having read from the record on page 2215?

A. Well, I should say that, if the certified copies are correct, that was the case, that the purchase was made on that day.

Q. I also read from page 887 of the record, that on the 27th day of October, 1899, final proof was taken before William Q. Ranft, receiver, and Thomas Bryan and Frank B. Arey were witnesses, and on the same day final receipt and certificate were issued. I now show you Complainant's Exhibit No. 10, and ask you if, from an examination of the deed, it does not appear that the conveyance of Dunham was made the same day that he made his final proof?

A. It appears, so, yes, sir; I do not dispute it.

Q. Had you had any negotiations with Mr. Dunham previous to this day as to his conveying to to you?

A. No, sir, except by the mortgage.

Q. Well, the talk was that he was to mortgage the land to you? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. I read from Mr. Dunham's testimony on page 2212: "I got the pay for the land about three o'clock, I believe, as near as I can judge; I got it about three o'clock in the afternoon. Q. You gave your testimony and proved up about one? A. Between one and two. I did not have the money in my pocket when I proved up; I went back and borrowed the money and paid for it; borrowed it from Mr. Cobban; and then I went back and paid him what I owed him and he paid me for the land. Q. You got one hundred dollars net? A. Yes, and more, too. Q. How much more? A. I cannot tell you: if I could tell you the exact figures, I could tell you how much I got for it. Q. Well, it was one hundred dollars, more or less? A. Yes, sir."

Now, then, you say that that afternoon the whole deal was commenced and continued and consummated as far as any talk relative to his selling the land to you was concerned?

A. Well, I don't state just exactly that, but I think that that was the case. I know that there was no talk with him, no conversation in any way, shape or manner prior to his proving up that I would buy the land or that he would sell to me or anything of the kind.

Q. Well, now, just tell me as near as you can recollect, Mr. Cobban, just what your modus operandi was; how did you tackle the man as to buying the land; what did you say to him?

(Testimony of R. M. Cobban.)

A. After the parties had proven up and came to fix up the papers for their loan, I would say to those parties: "Now, if you want to sell the land, I will give you so much for it." They would signify their wish, whether to sell or not. Oftentimes there was some bantering back and forth; some of them would not accept my offer and some of them would. Perhaps later on they would come and fix up the offer, and if they did not want to accept the offer, they were to secure the proposition by the mortgage as it had been agreed upon before.

Q. But in each and every instance they did sell to you, as far as those that are named in the bill of complaint are concerned, and no one of them did give you a mortgage?

Mr. BICKFORD.—It is manifest that they would not be named in the bill of complaint of they had not sold.

A. That was the case, I believe.

Q. So Mr. Dunham was one of the number that immediately that afternoon, after he had proved up, took his hundred dollars so and conveyed to you?

A. Well, the one hundred dollars was not the consideration for his deed.

Q. What was the consideration?

A. The consideration was between five hundred and six hundred dollars somewhere.

Q. I mean over and above what was paid into the land office and the expenses?

(Testimony of R. M. Cobban.)

Mr. WALSH.—Well, it appears that he did get one hundred dollars, and that he conveyed the land; now, what other fact is brought up by this question?

Q. And you had had no talk with him of any kind either through yourself or through any of your agents that were working for you, that he was to do this?

Mr. WALSH.—Yes, he said that.

A. I not only had no talk myself with him that I would purchase his claim, but I had no talk with any other entryman that I would purchase their claims, neither did any of my employees in any way, shape or manner, through any instructions from me or with my consent in any way. If any talk of that kind was ever had with any of my employees, it was without my knowledge or consent; in fact, I was very particular to caution my employees that there could be no offer nor no talk made with any party that we would buy their claims.

Q. But you had been pursuing the course that you have named from the beginning of these transactions, that is, calling the attention of the entrymen after they had made their final proof to the fact that you were in the market, buying lands, and that they could sell to you if you could agree on the price?

A. If I could buy it of them, yes, sir.

Q. And that, to your knowledge, was known throughout that country, was it not?

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—I object to that as not proper cross-examination.

A. Well, I don't know whether it was or not.

Mr. BICKFORD.—I will withdraw the objection.

Q. I next call your attention to the case of Mr. John G. Hendrix of Victor, page 50 of the bill of complaint. Do you know Mr. Hendrix? A. I do.

Q. How long have you known him?

A. Well, I don't think I ever met him before the season of 1899.

Q. That is, before you had this deal with him?

A. I have no recollection now of ever having met the man before that season.

Q. Do you recollect seeing him during that season?

A. I don't recollect positively, but I knew of him, and I think that I met him.

Q. Do you know how he came to make an entry?

A. Why, I think it was in much the same manner that those that have been talked about to-day. I don't know just how he came to make it.

Q. If, as a matter of fact, he testifies that he was located by Albert Jemison, and that he was sent to Mr. Cobban's office by Mr. Griswold with the description of the land and the names of the witnesses, and the papers were made out by Major Catlin from that memorandum, and that Mr. Catlin paid four hundred dollars into the land office, and that immediately thereafter he deeded to Mr. Cobban and received ninety or

(Testimony of R. M. Cobban.)

one hundred dollars from him, having borrowed ten dollars from Mr. Cobban at the time of filing on the land—are you prepared to deny the truthfulness of that testimony?

Mr. WALSH.—Objected to as not proper cross-examination. Counsel has no right to ask the witness whether the testimony given by somebody else is true or false.

Mr. BICKFORD.—I want to make the further statement at this time that that is not the testimony of John G. Hendrix as given before the Master in Chancery.

Mr. MAYNARD.—I have a right to ask the witness as to whether or not he is prepared to say whether any of those elements of fact which I have taken from his testimony are true or false to his knowledge.

Mr. BICKFORD.—When the statement of counsel includes acts done by other people, statements made by other people and transactions which manifestly, as far as the testimony is concerned at least, have not been brought to the attention of the witness now upon the stand, it is so manifestly unfair to ask this witness —work that was done by John B. Catlin or by somebody else, not in the presence of this witness. It seems to me it would be unfair to ask the question on cross-examination—

Mr. MAYNARD.—I admit, Brother Bickford, that it

(Testimony of R. M. Cobban.)

was unusual, and I did it simply for the purpose of trying to facilitate the examination. I have made a summary of the testimony of these various entrymen from their testimony, and I thought that possibly it would be agreeable to you, rather than to go at length into the details of the testimony as given in each of these cases, and that was all. I am anxious to get along as fast as I can, and not spend any more time than is absolutely necessary.

Q. Have you any knowledge, then, acting upon the objection of my brothers, as to whether or not Mr. Hendrix was located by Albert Jemison?

A. I am inclined to think that he was, and yet I am not positive at this time.

Q. If, as a matter of fact, he was located by Albert Jemison, would that be along substantially the same line of work as in the other cases of locations made by Jemison?

Mr. WALSH.—We object to that as not proper cross-examination. It calls for no statement of fact from the witness, and is indefinite.

Q. Is that the fact as far as you know?

A. I think so.

Q. If, as a matter of fact, he testifies that he was sent to Mr. Cobban's office by Mr. Griswold and that Mr. Griswold made the memorandum as to the description of the land and the witnesses, that would be along the same line of work that Mr. Griswold had done in

(Testimony of R. M. Cobban.)

the other cases that we have referred to, would it not?

Mr. WALSH.—We object to that same question on the same ground, that it is not proper cross-examination, it calls for no statement of fact from the witness and it is indefinite.

A. Mr. Griswold sometimes did that, yes, sir.

Q. I read from page 1961 of the record:

"Q. You may state, Mr. Hendrix, who paid this four hundred dollars that was paid for this land, into the land office? A. Mr. Catlin. Q. On what day was this? A. I could not state the exact day, but I thought a while ago it was in October. Q. It was on the day that you made your final proof? A. Yes, sir. Q. Did you pay any money of your own into the land office on that day? A. I think only this that he paid. Q. Who went with you to the land office? A. Mr. Catlin."

Have you any knowledge in regard to that fact?

A. No, sir, I have not.

Q. On page 1962 of the record, the witness says: "I was in Mr. Cobban's office before and after I proved up."

"Q. After you had proved up, and after this money had been paid in this way to the land office by Mr. Catlin, you may state as to whether or not you conveyed this land to Mr. Cobban? A. Yes, sir, I conveyed it to him. Q. Who were present besides you and your

(Testimony of R. M. Cobban.)

wife at the time you conveyed? A. I don't believe there was anybody present except Mr. Cobban and the typewriter or something of that order; it was about the noon hour and not many people were around. The deed was drawn up after I went to the office. Q. Who drew it? A. I can't state the man's name; I never did know what his name was. Q. At that time and place, when you executed the deed to this particular land, how much money did you receive for it? A. I think I received ninety or one hundred dollars, I am not sure which. Q. Who did you receive this ninety or one hundred dollars from?

"A. I received it from Mr. Cobban. Q. In what shape? A. It was in currency, bills. Q. You had previously borrowed ten dollars from him, hadn't you, or fifteen? A. From Mr. Cobban? Q. Yes, or Mr. Catlin? A. Yes, I had borrowed from Mr. Cobban ten or fifteen dollars; I think it was ten dollars. Q. When was that? A. At the time I made the filing on the land. Q. And then you received ninety or one hundred dollars at the time you conveyed to him? A. Well, the clear money I had coming to me was ninety or one hundred dollars."

Now, do you remember having paid this money to Mr. Hendrix?

A. I do not, but I have no doubt but what his testimony is in the main correct, with this statement, that after he proved up he was offered a certain sum of money

(Testimony of R. M. Cobban.)

for his claim, which I presume amounted to what he says, over and above the amount that was due me.

Q. You have no recollection of ever having had any conversation with Mr. Hendrix previous to your meeting him on the day of his final proof and paying him this money?

A. No, I haven't; I have no clear recollection of it, other than this, that I either had a conversation myself, or some of my employees had, in regard to the loan—to the making of the loan, beforehand. I don't know whether I did that personally or not.

Q. And if any arrangements had been made relative to a loan, you don't know what those arrangemets were?

A. They must have been in conformity with the rules laid down, that it would be secured by a mortgage on the land, and for about that length of time, about six months' time, and including, I think, in that instance—in most of those that were located by Mr. Jemison, those people that he sent down, there was one hundred dollars to be included in the mortgage for the expense and trouble of making the loan and locating them and looking after the papers.

Whereupon further hearing was adjourned until Friday, July 11th, 1902, at 10 A. M.

Thereupon, at the finish of the examination of Andrew J. Davis, R. M. COBBAN was recalled to the stand for further examination and testified as follows:

(Testimony of R. M. Cobban.)

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, did you find those checks?

A. I looked through my checks to find out if they were there, and there are no checks of those dates among them.

Q. Can you account for that?

A. Well, it must have been paid to them in cash instead of checks.

Q. Do you know—your stubs are there, aren't they?

A. There is no memorandum on the stubs.

Q. In existence?

A. I have the stubs, but there is no memorandum on them.

Q. So you think the money was paid in cash?

A. Yes, sir.

Q. Now, I call your attention to the conveyance of land named in the bill of complaint, to you by Thomas H. McConnell and Charles B. Sperry. The entries were made at the same time and final proof was made at the same time. The deeds were dated the same day, and the amounts named were the same. Now, with this information, have you any recollection whatever, of the transaction had between you and these men?

A. Yes, sir, I have some recollection of it.

Q. What is that recollection?

A. Well, the recollection is that Mr. Griswold told me that he had seen those parties, and they were desirous of making some location, and that they wanted a loan, and

(Testimony of R. M. Cobban.)

that he had told them that I would negotiate a loan for them, and when the time came around for the loan, I have no recollection now of ever having seen Mr. McConnell until after the institution of these proceedings. But it was in accordance with the statements of Mr. Griswold to me that the loan was made to Mr. McConnell. Mr. Sperry I am not quite so sure about, but I am inclined to think that I saw Mr. Sperry personally before his going to Helena, to make his final proof, and that the loan was negotiated through me personally. The actual sale of the land I don't remember particularly about right now, but I think that Mr. Sperry sold his land before Mr. McConnell did; and I think he sold in Missoula after his return to Helena; that is my impression about it.

Q. Well, what is your recollection as to the circumstances connected with the sale by Sperry?

A. Well, I think I made him an offer for the purchase of his ground either personally or through Mr. Pound. I am not certain whether I spoke to him personally or not. I am inclined to think I did, and gave what instructions were given to Mr. Pound to make the offer for his ground on his return from Helena if he wanted to sell it to him, otherwise to take the mortgage as we had agreed.

Q. As you had agreed when?

A. Before his trip—before the money was loaned to him, or at the time the money was loaned to him.

Q. But you hadn't seen Mr. Sperry, had you?

A. I stated a few moments ago that I thought that I

(Testimony of R. M. Cobban.)

had seen Mr. Sperry. I think that I also saw him just before his coming to Helena.

Q. But you are not positive about that?

A. No, I am not positive. But I say this, there was an understanding about the loan, that he was borrowing the money for that purpose; and I am not certain whether I talked it over with him personally or not, but I think that I did. I know that Mr. Griswold came to me and told me of these parties wishing to borrow money to prove up on their claims, and that he had told them that I would probably make the loan to them; had given them to understand that I would make the loan.

Q. At the time that Mr. Griswold informed you that he had two men that wanted to take up claims, and naming them, Mr. McConnell, and Mr. Sperry, you had no personal acquaintance with either of them, had you?

A. No, sir, I had not.

Q. You didn't know them at all? A. No, sir.

Q. And you relied solely upon what Mr. Griswold told you in regard to it?

A. I knew they were ranchers up there in that section of the country, and I knew where Mr. McConnell lived—that he was living on a farm up there.

Q. Whereabouts was that?

A. About two miles from Clearwater.

Q. Did you know that, other than what Mr. Griswold had told you?

A. Well, I am not certain whether I did or not. I

(Testimony of R. M. Cobban.)

think not. I think probably that was the information that I had.

Q. And was the same true substantially of Mr. Sperry?

A. Yes, sir. That is, Mr. Sperry was up in that country ranching. I am not certain where he was living, whether he was living at the mouth of the Cottonwood or not, as he is at the present time.

Q. As he what? A. As he is living now.

Q. Whether he was living at the mouth of the Cottonwood then or not, you don't know?

A. I knew he was living in that section of the country.

Q. But you have no dealings with him or had any acquaintance with him? A. No, sir.

Q. Well, if as a matter of fact you hadn't met him—Mr. Sperry, or Mr. McConnell, until after they had filed, and after all of the work that was necessary had been done, and the money had been paid into the land office and they had obtained their receiver's final receipt, that had all been done, without your ever having seen them, how are you able to state now that you had made arrangements with them by which they were to secure you by mortgage?

A. Mr. Griswold was instructed that where parties were reliable, that a loan could be made to parties provided the claims, after examination, were sufficiently valuable to justify a loan.

Q. Well, who was to determine the fact as to whether the claims were of sufficient value or not?

(Testimony of R. M. Cobban.)

A. I was to ascertain that.

Q. In each case? A. Yes, sir.

Q. Before the money was paid them?

A. Yes, it might be that—it might be that the loan might be initiated in some instances, and small amounts might be loaned to them in those two cases. I am under the impression that Mr. Griswold loaned them some money. They had to go to Helena to make their filing before having consulted me, and then afterwards consulted me in regard to the loan.

Q. Well, do you know where the money came from that was paid into the land office in these two cases?

A. Well, I furnished the money; I loaned the money to those parties.

Q. But you hadn't seen them?

A. It wasn't necessary to see them personally; I think, however, that I did see Mr. Sperry, and it is possible I may have seen Mr. McConnell, but I am not certain.

Q. Well, if it wasn't necessary to see them personally, how could you do it?

A. Mr. Griswold was in my employ to a certain extent and I relied on his statements to me in regard to that matter.

Q. In other words, that they were all right, and that the claims would justify the purchase? A. No, sir.

Q. Well, what then?

A. That the claims would justify a loan sufficient to enable those people to prove up on their claims.

Q. That is, to pay for the land? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Well, that is what I said, to purchase.

A. Yes, but the way you put it, it might be inferred two or three different ways.

Q. Well, have you any recollection as to whether that course was pursued, and you gave the money to Mr. Griswold to pay for the land in those two cases?

A. No, sir, I am not certain as to just what was done in that matter. I know I furnished money to them with the distinct understanding as to a loan either directly to them, or to Mr. Griswold, under his statement of the facts that they were to secure the money by a mortgage immediately after they had proved up, and just which way that was paid I am unable to say.

Q. As I understand you, assuming that you had never seen either of these men, and didn't see them until after all the work was done, and they obtained the final receipt, and it was all done through Mr. Griswold, you gave him the money to pay for the land, on the instructions to him that he was to see to that that if they would be required to go to you, to execute mortgages to the amount of the loan.

By Mr. BICKFORD.—The objection we make at this time is that counsel should not assume, and it is not fair to assume, because the witness had not at that time seen the parties, or either of them, when, as a matter of fact, the testimony of the witness discloses that he may have seen them, but does not recollect whether he did or not, and further, it is not proper cross-examination.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—What I said, Brother Bickford, was, that I was assuming that such was the case.

By Mr. BICKFORD.—Well, that is assuming facts that the witness has not testified to.

By Mr. MAYNARD.—Well, the fact is that both Mr. McConnell and Mr. Sperry have sworn that such was the fact.

A. Well, I am very certain that Mr. Sperry either saw me personally, or was at the office a day or two before proving up, and either spoke to me personally, or to Mr. Pound about the matter, and it was understood between them, as well as with Mr. Griswold in regard to the loan.

Q. But if you were mistaken in regard to that, and the fact was that you didn't see either of these men, then it would be as I suggested in the question.

A. That I was relying wholly on Mr. Griswold to carry out—

Q. Your instructions?

A. —the instructions in that line, yes, sir.

Q. Now, take the case of Mr. McConnell. I show you the deed that is in this case. (I show the witness Complainant's Exhibit No. 150) and call your attention to page 2439 of the record, where it says the—in the testimony of Register Greene, that the date of the final proof in this case is October 12, 1892—in the McConnell case. A. 1899.

Q. 1899, yes. And on eight days thereafter, it ap-

(Testimony of R. M. Cobban.)

pears that Thomas H. McConnell, and Laura, his wife, conveyed to you for the nominal sum of $1000, and that it was acknowledged before Mr. Wallace W. Warren, a Notary Public in and for Deer Lodge County, State of Montana. Now, do you recall any of the facts and circumstances attending the drafting of that deed, and the transfer by Mr. McConnell and wife to yourself?

A. I don't remember about the drafting of the deed. I remember something about the transaction. Mr. Mc Connell returned to his home without coming to Missoula to adjust his loan, or to make any settlement; and the time ran on for a number of days, and I thought perhaps he would come down, but he didn't. Before the execution of that deed, I learned, I think it was through Mr. Sperry, and yet I am not positive, although I think that Mr. Sperry told me that he thought Mr. McConnell would prefer selling his claim to giving a mortgage. Mr. McConnell not coming down, I sent a deed up there to be executed. I sent Wallace P. Smith up with the instructions to offer Mr. McConnell so much money for his claim, to buy the claim if he could for that sum of money. If he was unable to do so, then to have the loan secured by a mortgage, as had been agreed upon. Mr. Smith went up and returned with the deed, and reported that Mr. McConnell had agreed to sell the property, and had so deeded and so the transaction was closed.

Q. Who went with the notary, Mr. Smith?

A. I don't know that anyone went with him,

(Testimony of R. M. Cobban.)

Q. You sent him up with the deed and how much money?

A. He had a statement of the account, but just how much money I had advanced for this property as a loan, and what the amount would be in case it had to be a mortgage. But I had had notice, and I think from Mr. Sperry, that Mr. McConnell preferred to sell his claim to mortgaging it; and he did sell it in that way. I think the check sent was in the neighborhood of $150.00; but it might have been in currency.

Q. Have you that check with you?

A. Well, I haven't looked it up, but I will look it up to see if I can find it.

Q. So that I understand it, Mr. Cobban: you sent Mr. Smith from Missoula up into the Blackfoot country to the home of Mr. McConnell with a deed prepared, ready for his execution, and either a check or currency to the amount of $150,00.

A. I don't know that I sent the deed prepared. But my impression is that I did, for the very reason that it was some days, as the record disclosed, after he had made his proof, and I had obtained information, I think through Mr. Sperry, as heretofore stated, that Mr. McConnell wanted to sell his land.

Q. And you did yourself send Mr. Smith up with the check and with the deed, notwithstanding the fact that the express agreement had been made between him and your agent, Mr. Griswold, that he was to mortgage the land?

(Testimony of R. M. Cobban.)

A. I did for the very reason that I have stated heretofore, that I had the information from that source, that he preferred to sell, and would sell his land. However, Mr. Smith's instructions were that if he didn't care to sell, to take the mortgage.

Q. Well, if that was the possibility of that turn being taken, why didn't you have a mortgage drawn up and send that along with it?

A. Because, as I stated heretofore, I had that information and that while not positive, I believed that he wanted to sell. I think Mr. Sperry told me that.

Q. Well, you are not positive as to whether you received this information from Mr. Sperry or not, are you?

A. No, but I am positive I did have that information from some source. It may have been from Mr. McConnell. It may have been that Mr. McConnell was at my office, in my absence; but however that is, the matter was not fixed up then.

Q. Now, Mr. Cobban, this information on which you acted, in sending the amount of money that you have named, and the deed, might have come from Mr. Griswold himself, might it not?

A. It is possible, but I don't think so. I think it came from Mr. Sperry, as I have stated.

Q. Now, isn't it true that the reason why you sent that Notary up there intu the country with the deed and with a check, was because there had been an express contract and agreement made by you with him, through

(Testimony of R. M. Cobban.)

your agent, Mr. Griswold, that he was to do that very thing?

A. No, sir, it isn't the case, and there was no such contract to my knowledge

Q. There was not any such contract?

A. There was not; if Mr. Griswold had any contract of that kind, it was certainly contrary to my instructions to him. The very fact that Mr. Smith took a deed, when he was going up into the country, where he couldn't make a deed, shows that it was impossible. I don't suppose he could have got a blank within twenty miles. It was very natural that he should take a deed when he went up there to see these strangers.

Q. But his whole mission would have been in vain so far as closing up the deal was concerned, if Mr. McConnel had refused to execute the deed and had executed the mortgage instead?

A. I have stated that Mr. Smith was instructed to take the mortgage and close the matter up. I have so stated in my testimony.

Q. So he took a mortgage too along?

A. I think he did.

Q. Will you swear to that?

A. No, I wouldn't swear that Mr. Smith took a deed with him. I have stated what his instructions were—to close the matter up.

Q. And your instructions to him were that he was to take both a completed mortgage and a completed deed,

(Testimony of R. M. Cobban.)

except so far as the execution of the same was concerned, so that the deal could be perfected, and every emergency provided for?

A. I am certain that I told him to take either a deed or a mortgage. I sent him up there to have a deed executed if Mr. McConnell was willing to make the transfer at that figure, and if not, to take a mortgage. Now, whether or not I instructed him to take a deed, made out, and a mortgage made out or not, I don't remember anything about that. But Mr. Smith had his instructions to have executed either a deed or a mortgage.

Q. And you so instructed him? A. Yes, sir.

Q. And then, if as a matter of fact he never took the deed, and didn't draw up a mortgage at all, and didn't take that, then he didn't obey his instructions that he received from you?

A. Well, not necessarily that. Of course, Mr. Smith is an attorney and might have drawn a mortgage up there; but I was simply speaking of the blanks. I don't know but what Mr. Smith had in his possession a mortgage already executed. I don't remember about that.

Q. Wasn't the original deed drawn up in typewritten form? A. I couldn't say as to that.

Q. Filled out with a typewriter?

A. I don't know.

Q. I will refresh your recollection a little bit from Mr, McConnell's testimony. I read from the testimony in volume four of the record at page 1855, where the tes-

(Testimony of R. M. Cobban.)

timony of Thomas McConnell begins. The testimony to which I recall your attention is found on page 1873 of the record, as follows:

"Up to this time, when you sold the land, you hadn't seen Mr. Cobban at all? A. No, sir.

Q. Nor Mr. Catlin? A. No, sir.

Q. Did someone come to your home?

A. Yes, sir.

Q. Who was this man?

A. His name was Mr. Smith.

Q. He was the notary?

A. Yes, sir, he was the notary.

Q. How long was this Mr. Smith—what was his name? A. Smith.

Q. How long was he at your house?

A. He was there at Clearwater about two days, I think.

Q. Well, I mean, how long was he at your house when you sold the land?

A. Oh, he was there, I guess, about two hours,

Q. What did he do there?

A. Why he paid me the money to deed.

Q. He gave you a hundred and fifty dollars?

A. Yes, sir.

Q. What was that in, in currency?

A. Yes, sir.

Q. Had you ever seen him before? A. I hadn't.

Q. Was that deed you signed, and your wife; was

(Testimony of R. M. Cobban.)

it drawn up before you came to the house? Did he come to your house? A. What is that?

Q. Yes, sir, did he come to your house?

A. Yes, sir.

Q. Was the deed already drawn before he got to your house?

A. Yes, sir, all I had to do was to sign the deed.

Q. That was all you had to do? A. Yes, sir.

Q. And then you never saw Mr, Cobban or Mr. Catlin at the house? A. No, sir.

Q. And this Mr. Smith, you hadn't seen him until he came to your house? A. No, sir.

Q. You may state what took place at the house when Mr. Smith, this stranger that you afterwards found out was Mr. Smith, came to your house. What did he say to you?

A. He said that Mr. Griswold sent him there to have us sign the deed, and pay him for making the deed.

Q. Then what?

A. Well, I signed the deed, and my wife too.

Q. And he paid you the hundred and fifty dollars and went away? A. Yes, sir.

Q. Have you ever seen him since?

A. No, sir, I have not.

Q. Now, Mr. Cobban, in the light of this testimony, what have you to say about any talk ever having been had with Mr. McConnell by you, in regard to doing anything except receiving $150.00 for the deed?

(Testimony of R. M. Cobban.)

A. I think you have my evidence as it appears on the record that there was no undertanding of that kind, that Mr. McConnell and myself, or that any other person for me—that Mr. McConnell was to deed for a certain sum of money prior to this time—not until after he had proven up. I don't think even at the time Mr. Smith went up there, that there was an agreement—after he had proven up, that there was any agreement that he would sell, but simply I had an intimation that he would sell. And I don't see anything more natural in the world, and I don't see how the transaction could have been closed in any other way, than to send some person up there, as long as Mr. McConnell didn't come to me to close the matter up. I couldn't let the matter stand indefinitely. I must have a mortgage, or I was willing to purchase the land after he had proved up that he was willing to sell it at that figure.

Q. That is your explanation of that transaction, is it? A. Yes, sir.

Q. I read from page 1875, Volume IV, as follows: "Q. You received then just exactly what Mr. Griswold told you he would pay you, Mr. McConnell?

A. What is that?

Q. When you got this money, you got what Mr. Griswold told you you would before you went to locate the claim. A. I received more.

Q. You received more than Mr. Griswold said you would? A. Yes, sir.

Q. Can you account for that?

(Testimony of R. M. Cobban.)

A. I thought it was for part of the expenses; that was the only way I could account for it.

Q. That, what?

A. That was part of the expenses.

Q. Well, you have told us before that, the $50,00 you estimated would cover the expenses. A. Yes, sir.

Q. And that would leave you clear $100.00.

A. Yes, sir.

Q. And that is what Mr. Griswold said you would get. Now, I will ask you again, Mr. McConnell, in the conversation that you had with Mr. Griswold when you went over to see him on this day that you and Sperry went to look at this claim, whether or not Mr. Griswold hadn't told you that you could get a hundred dollars for it?

A. I don't remember the conversation that we did have. We didn't talk very much about anything. In fact, Mr. Sperry did most of the talking with him.

Q. But that was the amount that you expected to get? A. Yes, sir.

Q. And you expected to get that amount at the time you made the location of the land, after you had proved up on it?

A. Get a hundred dollars?

Q. Yes, sir.

A. I don't remember what it was—what the amount was that we were to get.

Q. Well, when did you first know that you was to be

(Testimony of R. M. Cobban.)

paid a hundred dollars over and above your expenses? Mr. McConnell, did you hear my question?

A. No, sir.

Q. I say, when did you first know that you were going to get your hundred dollars for the sale of this timber, over and above your expenses?

A. Why, before we went to look at the land.

Q. Now, Mr. Cobban, in the light of that of that testimony, when he said he expected to get this hundred dollars, when he went to look at the land, what have you to say as to whether or not at any time, he expected to mortgage that land?

By Mr. WALSH.—We object to that for the reason that it is not proper cross-examination.

A. Well, I have this simply to say; that if he was told that he was to receive any specified sum, for his claim, it was absolutely contrary to any instructions that had been given to Mr. Griswold or intimation on the part of Mr. Griswold to him. It was a transaction that I was not responsible for in any way, shape or manner, because I knew nothing of it; and if there was such an agreement I knew nothing about it.

Q. If there was such an agreement as that made between Mr. Griswold and Mr. McConnell, it was without any authority from you?

By Mr. WALSH.—We object to this because the witness McConnell don't pretend to say that there was no agreement about the matter at all; and the counsel

(Testimony of R. M. Cobban.)

has not read any testimony to that effect, but simply that Mr. McConnell testified that he expected to get that.

Q. Very well, if Mr. McConnell expected to get the sum that he named, which expectation was based upon a conversation that he had had with Mr. Griswold, you say that was entirely on Mr. Griswold's own motion, and not in accordance with your instructions to him, but directly against your instructions.

By Mr. WALSH.—We object to the statement of counsel for the reason that it has not been stated by the witness that this expectation was based upon any conversation that he had had with Mr. Griswold. But the witness positively testified in another portion of his testimony that there was no agreement between Mr. Griswold, or anyone else that he was to get $100.00 for his claim, or any other sum.

By Mr. MAYNARD.—Well, that is a question of fact that will have to be determined by the Court, whether or not what I assume is based upon the testimony or not.

By Mr. WALSH.—The witness has already answered the question fully anyway.

A. Directly against my instructions to make any offer or any statement that we would purchase the land from any of these people.

Q. But, notwithstanding the fact that it was not in accordance with his instructions from you, which

(Testimony of R. M. Cobban.)

you knew, but was against your instructions, notwithstanding that fact, you did send Mr. Smith up there with the exact amount that he was to give, and with a deed for him to execute which he in fact did execute?

A. Well, I believe, an examination of the testimony that you have just read, to the effect that he did not expect to get that sum of money that I had sent over to him answers that question.

Q. Very well, very well; be that as it may.

A. I think it shows on the face of it that there was no knowledge on my part of any such agreement.

Q. But notwithstanding the fact that you did not tell Mr. Griswold to do what he did do, you did send Mr. Smith up there to Mr. McConnell's house with the check and the deed?

By Mr. BICKFORD.—We object to that for the reason that there is no testimony that Mr. Griswold had made any agreement or promise of any kind, or any declaration to these people which led them to expect anything. And further, this question is not proper cross-examination.

A. I think I have answered that a number of times.

Q. Very well. Now, referring to the transaction with Mr. Sperry, you remember that Mr. Sperry went over to Helena with Mr. Griswold and Mr. McConnell, do you not? A. I think that was the case.

Q. And that the transaction would stand substan-

(Testimony of R. M. Cobban.)

tially the same, except so far as the conveyance of the land was concerned. That is so, is it not, Mr. Cobban?

A. Well, I am not quite certain about that. He made the conveyance before Mr. McConnell did.

Q. Now, this was acknowledged before Mr. Smith at Missoula? A. Yes, sir.

Q. How much did you pay Mr. Sperry for the land?

A. I think between five and six hundred dollars.

Q. How much over and above the purchase price and the expenses that Mr. Griswold attended to in Helena?

A. Well, I don't know, somewhere between a hundred and a hundred and fifty dollars.

Q. Was that in the shape of a check?

A. I am inclined to think it was.

Q. Have you got that check?

A. Well, I can look it up and see; I will make a memorandum of it now.

Q. Do you know how he happened to go down there to see you in regard to the matter?

A. Why, I suppose it was in conformity with the agreement that he would mortgage the property and secure the loan just as soon as he could. He would naturally come to Missoula from Helena on the train. If he came from Helena on the train he would come to Missoula. He couldn't stop anywhere except Bonner, and Missoula is the natural point.

Q. Don't you know that Mr. Sperry went there di-

(Testimony of R. M. Cobban.)

rectly in accordance with the agreement that he had made with Mr. Griswold that he would do, and that he was told by Mr. Griswold the amount of money that he was to receive in accordance with your instructions, and that immediately after receiving the receiver's final receipt, or as soon thereafter as possible he carried out his agreement with you?

A. If there was any such agreement, as you have stated I knew nothing whatever of it; and I have reason to believe that there was no such agreement. Mr. Sperry himself says there was not, and Mr. Griswold certainly had no reason for making any such agreement, because he had positive instructions not to make any such agreement. But I presume that Mr. Sperry came there in conformity with his agreement to secure that by mortgage, and he may have had the expectation after he had proven up, that he could sell the land to me.

Q. He may have had the expectation; and don't you know that he did have the expectation?

By the EXAMINER.—Mr. Cobban, had you finished your answer?

By the WITNESS.—Yes, sir.

Q. Now, don't you know that he did have that expectation? A. No, sir, I do not.

Q. Well, you know that immediately upon coming to your office he did convey to you the land?

A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. And did receive from you the stipulated amount of a hundred dollars and fifty dollars, the incurred expenses?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, for the reason that the witness has stated clearly and distinctly that there was no stipulated amount of any kind, or any stipulation that refers to the amount or with reference to the sale of the land to Mr. Cobban.

A. Well, I don't know. I didn't know in the first place that it was immediately after coming to my office. This deed of Sperry to me bears date the 20th of October. What the date of the other deed is I don't know.

Q. The same as the other, the 12th?

A. Well, that would be eight days after the proof was made.

Q. Well, the proof was made here in Helena, and your office is in Missoula?

A. He certainly didn't come to execute the—come in compliance with any agreement that he would sell the land to me.

Q. But be that as it may he did on going to your office, execute the deed and receive the money that you said?

A. He did come to the office and execute a deed to me under an offer of purchase from me after proof was made, at the time when he came there to the office.

(Testimony of R. M. Cobban.)

Q. Very well, I now call your attention to the purchase by you of the land of Calvin Yarger and his wife. Do you know Mr. Yarger? A. I do.

Q. Do you know his wife, Sarah Yarger?

A. I do.

Q. Do you know Mrs. Roll, his sister in law?

A. I know Mrs. Roll; I don't know whether it is his sister in law, or not.

Q. And Thomas Roll? A. Yes, sir.

Q. And Mary and Herbert and Mathilde Eddy?

A. Yes, sir.

Q. And George and Mrs. Dildine? A. I do.

Q. Now, these were all relatives, blood relatives of or by marriage, were they not?

A. Well, I couldn't tell you about that. That I believe has been—

Q. What is that?

A. I have no knowledge of that. I believe it was pretty fully heard in evidence that they were related a good deal.

Q. But you had no knowledge of it?

A. No, sir.

Q. What was your acquaintance with Mr. Yarger previous to your buying this land of him?

A. Well, previous to the spring of 1899 I don't think I had ever known him.

Q. That is, you didn't know him previous to about the time of his selling this land to you?

A. No, sir.

(Testimony of R. M. Cobban.)

Q. What is that?

A. No, sir, but about the time of his entry of the land.

Q. Well, do you now recall the facts and circumstances connected with his filing on the land and making his final proof, and of his conveying to you, with his wife? A. Yes, sir, I do.

Q. Well, will you be kind enough to tell me what your present recollection of the facts is?

A. I remember that Mr. Yarger came to me at my office in Missoula and stated to me that he had been up in the woods, and taken up a timber and stone claim; had chosen one that he wanted to make a filing on, but wasn't certain whether or not he would have the money to prove up at the time when it became necessary to pay for the land, and he arranged with me at that time, that he was to have a loan for the necessary amount that would be required to prove up on the claim.

Q. That was what he said to you?

A. Yes, sir, together with a hundred dollars, for making that loan, and for any assistance that we were to render him in the matter.

Q. The assistance in drawing and filing the papers and so on? A. Yes, sir.

Q. Well, was this promise, that the necessary money would be forthcoming, made without knowing the piece of land that he was to take up?

(Testimony of R. M. Cobban.)

A. No. I think the arrangement was made with him that if the land contained enough timber to justify the loan there would be two months before he would be required—before he would require the greater part of the money, and I think the arrangement was made, that provided the loan was considered good security for the money.

Q. The arrangement was made that he was to have the loan provided the land was sufficient security for the money you were to loan him?

A. Yes, sir, that is what the understanding was.

At this point a recess was taken until two o'clock of the same day.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Friday, July 11th, 1902, 2 P. M.

Hearing resumed pursuant to adjournment. Whereupon R. M. COBBAN was recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Did you find that Sperry check?

A. No, sir, I did not; I looked for it and I can not find it. It is not stubbed, and I can find no check. There seems to be some of my October checks that are evidently missing, but I have the stub books, and it does not show there, so I think it must have been paid in cash.

(Testimony of R. M. Cobban.)

Q. You said just prior to the adjournment for lunch that you had sixty days in which to make the investigation of the land that was entered by Calvin Yarger to determine the question as to whether it was sufficiently valuable to make the loan?

A. Yes, practically.

Q. Did you use that time for that purpose?

A. Well, I don't know whether I did or not. That was about the usual time, about ten weeks from the time of the entry till the time of the proving up. I did satisfy myself during that time that the land was worth the amount that was asked as a loan.

Q. Do you remember anything further that took place between you and Mr. Yarger up to the time that you bought the land of him? A. No, sir, I do not.

Q. Have you any recollection of having made this agreement with him, or is it just simply—

A. Yes, sir, I did make that agreement with him.

Q. You remember that distinctly?

A. I have a distinct recollection of making the arrangements with some other parties who filed at the same time, or about the same time, and I am quite certain that I made such an arrangement with Mr. Yarger. If I did not see him personally and have a talk with him, at least there was such an understanding between some of the parties who represented him, or himself, and I am very certain that it was with himself that I had the talk, and it was in pursuance of that that the money was given to him for that purpose.

(Testimony of R. M. Cobban.)

Q. Have you any personal knowledge as to what the circumstances were which led him to make the location? A. No, sir, I don't know.

Q. Do you know who he was located by?

A. I think that Albert Jemison located him; I am quite certain that he did.

Q. What do you base that on?

A. Well, I think he told me so. I think that Albert Jemison showed him his claim. I don't know that he found the claim for him. If you will kindly tell me the date of the entry of that claim, I may be able to say for certain whether I had that conversation with him.

Q. Yes, I can tell you exactly. I read from the record on page 885:

"August 19th, 1899, Calvin Yarger made timber and stone sworn statement No. 295, for the west half of the northeast quarter and the west half of the southeast quarter of section twenty-eight, township fifteen north, range sixteen west. Notice was published in the Missoulian, and Herbert Eddy, Mary Eddy, Albert Jemison and E. R. Kilburn were named as the witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, and Herbert Eddy and E. R. Kilburn appeared as witnesses."

A. I am quite certain that I had that conversation, although I would not like to swear positively to it. I know that he made that arrangement personally with me, or someone for him arranged for the loan, but I think it was a personal matter.

(Testimony of R. M. Cobban.)

Q. Do you recollect what were the conditions of the loan?

A. The same as in other instances that I have recited.

Q. What was that?

A. That I would loan him the money for proving up, that was necessary for proving up, and that he would secure the payment by a mortgage, and I am quite certain that I had that conversation with him myself.

Q. You are unable to state, I suppose, as to when that conversation took place?

A. I think it was at the time of the filing on his claim.

Q. Do you know who sent him to your office?

A. I don't know that anybody sent him there, but I think that he came under direction from Albert Jemison—was advised to come there.

Q. He was one of the quite large number of men that were located by Jemison?

A. Who found their claims through Jemison, yes, sir. I don't know in his case; I am not certain whether Jemison found his claim or whether he went and hunted his own claim. There were some of those people that located claims about that time that found their own claims, but I think that Mr. Jemison showed it to him.

Q. Do you know who took charge of the matter for him as to drawing the filing papers, etc.?

A. I presume Mr. Catlin did, but I am not certain.

Q. Will you please examine this deed of Mr. Yar-

(Testimony of R. M. Cobban.)

ger's, Complainant's Exhibit No. 72. On this 30th day of October it seems that Mr. Yarger deeded the land that he had entered, and acknowledged the deed before Mr. Weisenflue, a justice of the peace for Ravalli County, and the consideration named therein is $800. How much in fact did you pay Mr. Yarger for that land?

A. Well, I think between five and six hundred dollars.

Q. You have no personal recollection as to how much you did pay him? A. No, sir, not exactly.

Q. Or any of the facts and circumstances connected with the transaction?

A. Not clearly with this transaction, no, sir.

Q. I wish you would refer to your check-book and see if you cannot find a check for seventy-five dollars that you paid him. A. I can; I have it.

Q. Let me see it, please.

Mr. MAYNARD.—I desire to offer this check in evidence and to read it into the record.

Mr. BICKFORD.—You can read it into the record, but we desire to keep the checks ourselves.

Mr. MAYNARD.—Certainly. "First National Bank of Missoula, Montana. Pay to the order of Calvin Yarger $75.00, seventy-five dollars. Missoula, Montana, November 2nd, 1899. R. M. Cobban." Endorsed: "Calvin Yarger"; and also endorsed with the stamp of the bank: "Paid November 6th, 1899."

Q. Have you another check? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. What date is that? A. November 6th.

Mr. MAYNARD.—The second check is the same as the first, with the exception that the amount is seven dollars and 80-100, and the date is November 6th, 1899.

Q. Do the reading of those checks refresh your recollection, Mr. Cobban, in regard to anything connected with it?

A. I bought the property directly of him myself.

Q. Does that represent the entire amount of money that you paid Mr. Yarger in person, other than that which was paid into the land office?

A. No, sir, I think not.

Q. How much more did you pay him?

A. Well, I am unable to say, but I think that I paid him, besides the loan that he had, in the neighborhood of one hundred and twenty-five dollars.

Q. What makes you say that?

A. Because I have no recollection of purchasing any ground for so small a sum as represented by those checks, and I am quite certain that there was more paid to him.

Q. But you have no recollection as to the amount?

A. No, sir, I have not.

Q. Do you recollect about loaning him or paying him some twenty-five dollars in cash on the day that he made his final proof?

A. I have not any recollection of that, though I may have done so.

(Testimony of R. M. Cobban.)

Q. And that would make the hundred dollars, wouldn't it?

A. I stated before that I am unable to tell you.

Mr. WALSH.—The question now put, as I understand it, is whether seventy-five and twenty-five do not make one hundred. Wasn't that the question, Mr. Maynard?

Mr. MAYNARD.—Yes, sir.

Q. And that would be the amount that you had agreed to pay him for his land over and above the expenses?

Mr. BICKFORD.—We object to that because the witness has not so stated; it is merely an assumption of counsel and is not proper cross-examination.

Q. Isn't that so?

A. I think I stated clearly, Mr. Maynard, that I did not recollect the purchase price of that ground, but that it would not be far from that, over and above the amount of money that I loaned to him.

Q. Now, isn't it true, Mr. Cobban, that Mr. Jemison, in pursuance of the work that he was doing for you under Mr. Griswold's employment, located this man, and that he came to your office and that the papers were made out by Major Catlin, the filing papers, and that you had no acquaintance with Mr. Yarger, and had had no talk with him in any way in regard to the subject matter of this deal until the day of the final proof, and that as a matter of fact, immediately after he had made his final proof he carried out his agreement with you

(Testimony of R. M. Cobban.)

to do what he did and got his money in this way, that he took the deed that was then prepared in your office on the very day that he proved up, and took the deed home with him up to Victor for his wife to join with him in the execution of the deed, and that they both acknowledged it before this justice up there, and he returned it to you, and that you mailed him that check for seventy-five dollars?

A. You have a good many questions in that one. I will simply say that in the main it is false. If you will segregate your questions I will try and answer them one at a time.

Q. What part of that question was false?

Mr. BICKFORD.—Wait a moment. Let the stenographer read it to him and see.

The EXAMINER.—It is a very long question, and I think the witness has stated a proper objection to it. I think you had better be more specific.

Mr. MAYNARD.—Very well.

Q. Do you remember the fact that the deed was drawn up in your office on the day that the final proof was made?

A. I think that it may have been, and yet I am not certain. The deed itself will probably show that. The deed is dated the 30th day of October.

Q. Well, the final proof was made on the 27th, three days before.

A. Then the deed could not have been executed, or

(Testimony of R. M. Cobban.)

could not have been drawn up on the day that he made final proof.

Q. Why couldn't it?

A. Because it does not show on the face of it that it was.

Q. I ask you the question if the deed could not have been drawn up ready for execution on the 27th of October, and taken by Mr. Yarger up to Victor with him to have his wife join with him in the acknowledgment of the paper? A. Well, that might have been.

Q. If that was so, then as a matter of fact the arrangement for the sale had been made between you and Mr. Yarger?

Mr. BICKFORD.—We object to that on the ground that it is not proper cross-examination, and because it assumes a state of fact which has not been testified to by the witness.

Q. Very well. I read from page 1916 of the record, the testimony of Mr. Yarger:

"Q. Then how long a time after that was it that you sold this land to Mr. Cobban? A. I think three or four days after I signed the note; I don't remember just exactly. Q. Your wife, Sarah, was at home at this time? A. She was. Q. So it was necessary for her to sign the deed, as you understood it, wasn't it? A. Yes, sir. Q. And the deed was sent up to your home, wasn't it? A. I had it in my pocket. Q. When you went home? A. Yes, sir. Q. And who did you take this deed that you had in your pocket before; what

(Testimony of R. M. Cobban.)

magistrate or justice of the peace? A. Weisenflue. Q. And acknowledged the deed? A. Acknowledged the deed. Q. Signed it and acknowledged it? A. Yes, sir. Q. What did you do; did you give it to him, or did you send it back to Cobban yourself? A. I sent it back to Cobban myself. Q. How long after you signed the deed? A. I don't know how long. Q. Had you been paid for this deed before you sent the deed down? A. No, sir. Q. You did not receive your money for it until after you went down after it. A. I did not go down for the money at all. Q. How did you get it? A. Check. Q. A check came to you through the mail? A. Yes, sir. Q. After you signed the deed? A. Yes, sir. Q. And how much was the check for? A. Seventy-five dollars."

Now, then, in the light of that testimony, what have you to say as to whether or not the deed was prepared in your office on the day that the proof was made, and that he carried it home?

Mr. BICKFORD.—We object to that as not proper cross-examination, and as a repetition of a question which has already been answered by the witness.

A. I don't know why such might not have been the case. I know that I talked with Mr. Yarger after he proved up and bought his claim from him. Just what day, whether it was the same day that he proved up, or two or three days later, I am unable to say.

Q. Then, as a matter of fact, that was the first time

(Testimony of R. M. Cobban.)

that you had had any conversation with Mr. Yarger on the subject?

A. I think not. It was the first time that I had had any talk with Mr. Yarger on the subject of purchasing his land, but—

Q. Wasn't it the first time that you had ever had any conversation with him relative to the transaction at all?

A. I believe not. As I stated before, I think I negotiated the loan, and I am further convinced of it from Mr. Yarger's testimony, which you have just read.

Q. I read from page 1915 of the record:

"You said you had never seen Mr. Cobban in your life before that day of going to him? A. I did not say so. Q. What did you say? A. I said I had never had any conversation with him. Q. You never had any conversation in your life before with Mr. Cobban until this day that you proved up and went to the land office? A. I might bid him the time of day—except when I proved up. Q. You were introduced to him by Mr. Catlin, were you? A. Yes, sir. Q. After the introduction to Mr. Cobban by Mr. Catlin, Mr. Cobban paid you four hundred and eleven dollars and fifty cents? A. And then I went to the land office and paid the money in."

Was he mistaken when he testified to that?

Mr. WALSH.—That is not proper cross-examination.

A. I don't know whether I had seen him when he made his filing or not, but if I had not, I had been certainly told about it by those in my office who knew about it, and I certainly, before making him the loan, knew

(Testimony of R. M. Cobban.)

about his claim and knew whether it was worth it or not.

Q. If, as a matter of fact, Mr. Yarger is not mistaken, that he was not introduced to you, and had no business with you whatever until the day he proved up and deeded to you, you are mistaken when you swear that at the time of his filing or thereabouts he spoke to you with reference to a loan.

A. Well, that was my impression, that he spoke to me at that time. If he did not speak to me, it was understood by me that he desired a loan. He may have spoken to Mr. Catlin or Mr. Pound about the loan; I am not positive whether he spoke to me or not. He might never have spoken to me until the time of proving up.

Q. So that the conversation that he had with Mr. Catlin, or may have had with Mr. Pound or with Mr. Griswold or Mr. Jemison, and that were communicated to you through them, you would regard substantially as if the conversation had been had with you yourself?

Mr. WALSH.—You need not mind answering that. That is not any proper cross-examination as to any fact at all, and we object to it. What has that got to do with the case?

Mr. MAYNARD.— What hurt would it do for him to answer that?

A. Why, certainly I would not, but an application made in the proper shape for a loan, coming to me in the right channel, I would consider it, but general con-

(Testimony of R. M. Cobban.)

versation I don't know that I would recognize or be bound in any way by.

Q. Now, as a matter of fact, Mr. Cobban, Mr. Yarger's wife had deeded to you, had she not?

A. I don't remember.

Q. You don't remember that?

A. I don't for certain; I think I bought a claim of that kind, Sarah Yarger; I think so.

Q. Have you any recollection as to the circumstances connected with the purchase of land from Sarah Yarger?

A. Nothing more than in a general way, as in Mr. Yarger's case.

Q. If, as a matter of fact, the entry had been made and the arrangements made with Sarah Yarger previous to Calvin Yarger's entering the land, there would be some facts and circumstances that would be different from his, would there not? If you produce the check which you gave Mrs. Yarger, that might refresh your recollection.

A. I have no such check; I might have given her one, but I haven't it.

Q. You say that you have no check that you gave Mrs. Yarger? A. No, sir.

Q. Do you remember paying her in currency?

A. I do not.

Q. You remember nothing about the facts and circumstances of her entry?

A. Nothing more than that it passed through the routine similar to what I have stated here in some of

(Testimony of R. M. Cobban.)

those other instances. I made Mrs. Yarger a loan, and after her proof I made her an offer for the claim and she accepted it and I paid her for it. How it was paid, whether it was paid in currency or a check I am unable to say; if in a check, I haven't the check with me.

Q. And you have no personal knowledge, and the testimony that you now give relative to your dealings with Mrs. Yarger is just simply based on the general proposition that they were all substantially alike?

A. I have a knowledge of the transaction in a way, and yet I don't remember the exact details of it.

Q. Now, let me refresh your recollection. Do you know Mrs. Roll, the wife of Thomas Roll?

A. I do.

Q. How long have you known her?

A. Well, I have known her just during that summer; I think I met her at the time that she made her entry there in Missoula.

Mr. WALSH.—You might shorten this matter, Mr. Maynard, by asking the witness if it is not a fact that he was not acquainted with any of these parties who live up there in the Bitterroot valley.

Q. Is it true that all these people that appear in the record to have lived in the Bitterroot country, that you had no knowledge or acquaintance with them previous to your transactions with them?

A. I think that they were all strangers to me; I knew of some of them, but personal acquaintance I think I had none.

(Testimony of R. M. Cobban.)

Q. Did you have any conversation with Mr. Albert Jemison in regard to who they were?

A. I certainly did as to some of them, yes, sir; I knew who those people were either through Mr. Jemison or by inquiry elsewhere.

Q. And the greater part of these men and women you were informed by Albert Jemison were relatives of his, either blood-relatives or by marriage?

A. I don't think he informed me of anything of that kind.

Q. Well, you heard his testimony that some fifteen of his relatives made entries under the Stone and Timber Act and sold to you, did you not?

A. Yes, sir, that is his testimony.

Q. And you have no reason to doubt that?

A. No, sir, I have not.

Q. Now, do you know Mrs. Dildine? A. I do.

Q. And Mrs. Roll and Sarah Yarger?

A. Yes, sir.

Q. Now state as to whether or not they came together.

A. Well, I don't remember whether they did or not; it was about the same time; I am not certain whether they came together or not.

Q. Do you know what any of the circumstances leading up to the purchase of land from Mrs. Dildine were?

A. Yes, sir, I do.

Q. Well, state them, please.

(Testimony of R. M. Cobban.)

A. Mrs. Dildine, after she had proven up, came to see me a day or two after she proved up. I don't think that she came that day, but she said that she wanted to give a mortgage on the land. In Mrs. Dildine's case I had asked her and there had been an agreement between us that she was to pay something more than one hundred dollars for the location; in her case it was different from anything else, any of the other claims, and why I don't know, but she objected to including that amount in the mortgage. I agreed finally that I would take fifty dollars and take a mortgage for six months—I think the time was six months and I think the rate of interest was one per cent a month or twelve per cent per annum, and that I would take fifty dollars for the work that had been done in connection with her claim in locating her and the making out of the papers and the loan.

Q. That is, you would add fifty dollars in the mortgage?

A. Yes, instead of the amount that had been agreed upon.

Q. Instead of one hundred dollars?

A. It was a little over; it was something over one hundred dollars; I have forgotten just what the rate was or why it was, but it was a little over one hundred dollars that she was to pay me, and she agreed to give me the mortgage, and she went out and left the office. Later she came back and I think Mr. Dildine was with her, I am not certain, but anyway Mr. Dildine objected to giving the mortgage. I had told her at the same time

(Testimony of R. M. Cobban.)

when we had discussed the mortgage proposition that if she wanted to take so much for the claim I would give it to her; this was after the proof was made, I think a day or two, and it was two or three days, I think, before the matter was finally fixed up, and the reason she did not give the mortgage was because Mr. Dildine objected to it and told her that if she could sell the claim she had better do it, and the sale was made in that way.

Q. So that after all the arangements had been made by which she was to mortgage the land and have fifty dollars included over and above the amount that you advanced to pay for the land and the expense of publication and so on, she concluded to sell? A. She did.

Q. And that was some days after the final proof?

A. I think it was two or three days; that is my impression. I know that there were several trips to the office back and forth after she came to see about fixing the loan in the first place and after I had made an offer to purchase her claim; there were several trips, as I have stated, to the office, and she gave me to understand that the mortgage would be executed and that she would give the mortgage instead of a deed, and it was through Mr. Dildine's influence that the mortgage was not given.

Q. Now, if that was so, Mr. Cobban, as you have now just stated as to you relations to Mrs. Dildine, how was it that the deed for the land that she entered was drawn up on the same day that she made her final proofs?

A. It might have been that she concluded even on that day, though, as I explained before, there were

(Testimony of R. M. Cobban.)

several trips, and these conversations took place as I have stated and there were several times that she was in the office, and I think that it was sometime after the final proof before the deed was finally delivered.

Q. I ask you again if the whole plan was made that she was to mortgage the property and it was only repudiated by her husband refusing that proposition, how was it that on the very day that she obtained her final receipt, the deed was drawn?

Mr. BICKFORD.—We object to that, because in the first place the record does not show that the deed was executed on the day that the final proof was made, but on the contrary, and on the evidence of Mrs. Dildine, it was three or four days after the final proof, and if the deed is dated the same day, there is an error in your certified copies of the deeds, that is all.

Mr. WALSH.—Besides, there is no testimony here to show that any deal was repudiated by anybody.

Mr. MAYNARD.—The answer to that is that the certified copy of the deed which has been offered in evidence in this case, as far as anything appears in this record, is a true and compared and absolute copy of the original deed of which it purports to be a copy.

Mr. WALSH.—Yes, the certificate says so.

Mr. MAYNARD.—And counsel on the other side have offered no testimony to show that it is not correct in every way.

(Testimony of R. M. Cobban.)

Mr. WALSH.—The certificate is better than counsel's statement.

A. I have in no manner attempted to say that a bargain might not have been made on the day of the final proof that I should purchase the land; that, however, the transaction was not closed and she did not decide definitely that she would sign that deed until later. She may have signified that very day, after having talked about the mortgage—and as I told you, there were several trips into the office and several conferences with Mr. Dildine, and Mr. Dildine objected seriously to her giving a mortgage. Now, that might all have taken place on one day, but the deed, the final transaction was not closed for several days. She still—

Q. The fact is that the final proof was made on the 7th of October, and the deed was drawn up in your office and dated the 7th of October and acknowledged on the 9th of October, two days thereafter. Now, do you say that the delay of those two days in the final execution of the deed was occasioned for the reason that you have stated?

Mr. WALSH.—There is no evidence to prove that it was drawn on the 7th day of October at all.

Mr. MAYNARD.—Well, dated the 7th day of October.

Mr. WALSH.—The fact that it was drawn up on the 7th is a mere matter of guess that counsel makes about it.

Q. I show the witness the deed itself. I read from

(Testimony of R. M. Cobban.)

the deed itself, exhibit 5: "This indenture made the 7th day of October in the year of our Lord 1899." The sum of eight hundred dollars is given as the consideration price, and the acknowledgment was on the 9th of October, before Wallace P. Smith. Now, I ask you if the delay of two days in the execution of the deed by Mrs. Dildine was for the reason that you have stated, that they were considering the question as to whether or not they would carry out the proposition to mortgage?

A. I certainly do state that, and if you ever had any dealings with women, you know how changeable they are. Mrs. Dildine, I think, may have said on that day, after the conversation about the mortgage and talking this over, that she finally agreed to deed, but I simply state now that she did not carry out that proposition for several days.

Q. Well, you mean two days?

A. Well, or two days; two or three days, yes, sir; the 7th to the 9th is two days.

Q. Now, then, when it was carried out and she sold to you, while the nominal consideration is the sum of eight hundred dollars in the deed, how much did you pay her over and above the money that you paid into the land office for the purchase and the expenses?

Mr. BICKFORD.—We object to that because there is no evidence anywhere in the record given by anybody that Mr. Cobban paid any money into the land office for Mrs. Dildine's entry, and we object to counsel's assumption that such is the case, and we want to put our objec-

(Testimony of R. M. Cobban.)

tion on record now to the continual assumption by counsel of false premises on which he bases his questions, evidently with the intention of misleading the Court or the witness himself or all concerned.

A. I think I paid Mrs. Dildine about five hundred and seventy-five dollars or in that neighborhood for her claim.

Q. Do you mean that she would net one hundred dollars and expenses?

A. I don't know what it would net.

Q. Well, when you persistently answer five hundred and seventy-five dollars, and I have told you time and time again that when I asked you that question I do not ask for the amount of money that was paid into the land office for the purchase of the land and for the expenses, but the amount that was paid to her individually after the final proof was made.

Mr. WALSH.—One moment. This gentleman here has no business to lecture this witness at all; that is utterly improper here.

Mr. BICKFORD.—Not only that, but we want to put this objection and have it placed on the record, and that is, that when counsel asks the consideration that was paid for a particular piece of land, it is the duty of the witness, in telling the truth, to tell the exact consideration as near as he remembers it, and he is not compelled to answer the question in the manner dictated by the gentleman upon the other side.

(Testimony of R. M. Cobban.)

Mr. WALSH.—Furthermore, inasmuch as it does positively appear from the evidence that Mr. Cobban did not pay any money into the land office on account of any entry of Mrs. Dildine's, it would be impossible for him to answer the question that counsel put to him.

Mr. MAYNARD.—That there may be no misapprehension as to the fact, I read from the record in the case, on page 1828—

Mr. WALSH.—The record is there, and it can be read from. But now, if the Master please, with reference to these matters, this thing is stringing out here to limits that are past all reason, and, as your Honor knows, the defendants never can recover any costs from the Government of the United States in this matter and this is our testimony and we are obliged to pay for this, and it is not a fair proposition at all for this counsel to go on and read a long lot of stuff from this record and make us pay for it when there is no possibility of getting costs back from the Government for this. He has got no right to read into the record here a lot of the testimony already given, for the purpose of making any explanation at all; it is no part of the examination. He has no right to indulge in long speeches to this witness and to lecture him as to what he ought or ought not to do, at our expense whether we win or lose this suit. I am going to insist, if your Honor please, that we have got to draw some sort of a limit.

Mr. MAYNARD.—Now, Mr. Examiner, what I desire

(Testimony of R. M. Cobban.)

to say is this, that if either of my brethren can suggest any way in the world by which this cross-examination can be limited with fairness to the interests of the Government, I will be only too glad to receive the suggestions. Furthermore, I would be glad to receive suggestions from the Examiner. But here is a proposition in regard to the question about whether this money was paid into the land office or not.

Mr. WALSH.—We have made an objection to the introduction of this testimony. Now, there is no explanation necessary on your part; it does not help it at all.

Mr. MAYNARD.—My answer to that is this, that in fairness to this witness I should state to him just exactly what this record shows, from the testimony of Mrs. Dildine, to see whether or not, when he has heard that read, he desires to give the same testimony that he did before.

Mr. WALSH.—You would not be permitted to examine this witness in any court in that manner. At least Judge Knowles wouldn't let you.

The EXAMINER.—Go right along and put questions to the witness.

Q. Mrs. Dildine says, on page 1827:

"Q. Who did you get the money from? A. I borrowed it. Q. From whom? A. Mr. Pound. Q. Had you seen him in connection with this business before you went to file, to make your final proofs? A. I couldn't say whether I had seen him or not. Q. Had you had any talk with him until the day of the final proof in regard to

(Testimony of R. M. Cobban.)

getting this money? A. No, I think I had not. Q. Was it on this day? A. I think it was on the day that I proved up that I borrowed the money from him."

Now, have you not stated repeatedly that borrowing money from Mr. Pound was substantially the same as getting it from yourself?

Mr. WALSH.—Let us get back to the question. The question was how much money he paid Mrs. Dildine over and above the amount that he paid into the land office for Mrs. Dildine.

Mr. MAYNARD.—Yes, sir.

Mr. WALSH.—You have not called his attention to any such testimony as that.

Mr. MAYNARD.—What I say is this—

Mr. WALSH.—Never mind what you say. Just keep to the question.

Mr. MAYNARD.—The record shows that this money was paid into the land office.

Mr. WALSH.—By whom?

Mr. MAYNARD.—By Mrs. Dildine.

Mr. WALSH.—Not by Mr. Cobban. You didn't ask him, in addition to what Mrs. Dildine paid into the land office, but in addition to what he paid into the land office for her.

Mr. MAYNARD.—The testimony is that on that day she received the money from Mr. Cobban and paid it into the land office.

(Testimony of R. M. Cobban.)

Mr. WALSH.—You asked him how much he paid her over and above the amount that he paid into the land office.

Mr. MAYNARD.—Yes, sir, the amount of money that he paid her over and in addition to the amount of money that he paid into the land office.

Mr. BICKFORD.—And the testimony is that he did not pay any money into the land office.

Mr. MAYNARD.—The testimony is that she borrowed the money from him, and took the money on the very day that she deeded to him, to make the final proofs, and he charged her up with that much. Now, I don't care anything about that; I am asking him for the amount in excess of the amount that he gave her to pay for the land.

Mr. BICKFORD.—No, you didn't ask him that at all.

Mr. WALSH.—You ought to have withdrawn your question at the start.

Q. I want to know how much you gave her in excess of the amount that you gave her to pay into the land office?

Mr. WALSH.—That is another question entirely.

A. I think I gave her in the neighborhood of one hundred and thirty-five dollars in excess of the money that I had loaned her.

Q. Yes, that is just what I asked you all the way through.

The EXAMINER.—Just keep on putting questions.

(Testimony of R. M. Cobban.)

Q. Did you give that in currency or in a check ?

A. I am not certain; I can tell you in a minute. I think I must have given it in currency.

Q. You have no check there?

A. I have no check. I might have a stub perhaps. I don't see any stub, but I will take a memorandum of it and see if I can find it.

Q. Take a memorandum and produce it in the morning, please. Now, I call your attention to the deed of Mr. George Dildine. Do you recall the facts and circumstances connected with this purchase? A. Yes, sir.

Q. What were those?

A. I had nothing to do with Mr. Dildine's claim; I made no loan or anything of that kind to him, but after he had proven up—I knew of the claim, I was watching the notices all the time of publication and I knew the claims that were being proven up on, and I saw Mr. Dildine and made him an offer for his claim, and after some little bantering back and forth—I think he made some inquiries to see whether he could sell it to any other parties to better advantage—he finally accepted my offer.

Q. I understand in this case of George Dildine that he paid for the land with his own money?

A. Yes, as far as I know he did.

Q. That you did not advance him the money?

A. No, sir.

Q. And knew nothing about the taking up of the land or the purchase of it until after he had obtained the receiver's final receipt?

(Testimony of R. M. Cobban.)

A. Well, I may have known that he took up his land, and probably did know of it. I probably knew about the amount of timber that was on his claim before he made final proof, but to my knowledge there had been no conversation between himself and me or between himself and anyone in my employ as to the disposition of that claim in any way, shape or manner, until I talked with him about buying the claim after he had proven up.

Q. Then this entry of George Dildine's stands on a different footing from any other case that is named in the bill of complaint?

Mr. WALSH.—Now, I am going to object to that; you need not mind answering that.

The EXAMINER.—Yes, I think that is a question that he cannot be compelled to answer.

Q. You had no talk with him relative to his conveying the land to you at any time previous to the final payment in the case?

A. I just so stated in my last answer to you.

Q. Well, I want to understand, because it is a grave question as to whether this belongs to the case or not.

Mr. BICKFORD.—You might ask the stenographer to read the answer.

Mr. MAYNARD.—I will pass that.

Q. Now, I desire to call your attention to the deeds that were made to you by Levi and Vital Cyr, Mr. Cobban. Do you know those men? A. I do.

(Testimony of R. M. Cobban.)

Q. Do you remember the circumstances which led up to the purchase of their lands? A. Yes, sir.

Q. I wish you would state them to me if you can.

A. Well, those parties came to me to see if they could make a loan on their claims for proving up. I arranged with them for loans, and my impression is that when I saw them the first time, when they arranged about the loan, they had taken up their claims already; I am not certain as to that, but I think so. I did loan them the money to prove up. Then, after they had proven up, they came to my office and, instead of executing the mortgage or giving me security for the money that I had loaned them, I made them an offer to buy their claims, and they accepted the offer. Just what time there was consumed in that, whether it was one or two days or several days, I don't know, but I think in the case of Levi Cyr it was some time anyway before the deal was fully consummated. There was no intimation nor no talk in any way, shape or manner, and nothing that could be construed as a proposition on my part to purchase their claims or to have anything to do with them, other than to make them a loan, until after they had proven up.

Q. Do you know who located Levi?

A. I understood from his testimony in the case that Mr. Seeley showed them the ground.

Q. Was Mr. Seeley working for you at that time?

A. He was not.

Q. Do you know how he came to locate them?

A. Only by their own testimony in the case.

(Testimony of R. M. Cobban.)

Q. Do you know how they happened to come to your office? A. Well, I don't know—

Q. For the purpose of having the filing papers made?

A. I don't know, unless it was the fact that I was perhaps the most prominent man in that line in town, and people generally knew that. I don't know that we did make the papers; I have no recollection of it now.

Q. Were you present at the time that the final proof was made in the case of Levi Cyr?

A. Was I present?

Q. In Helena, yes.

A. I may have been in Helena; I have no recollection, but I may have been in Helena at that time; I don't think so.

Q. Do you know who paid the money into the land office for the payment for the land? A. No, I don't.

Q. Mr. Cyr says on page 2033 of the record: "I suppose that Mr. Cobban paid the two hundred dollars into the land office." Do you know whether that is true or not?

A. I may have sent that money to the Collins Land Company or by some individual to pay in for them. The natural supposition is that I would use a precaution of that kind in making a loan with people that I was not intimately acquainted with, to see that the money was used for the express purpose for which it was borrowed. It was our custom with people that we were not well acquainted with to see that the money was paid for the express purpose that it was borrowed for, and it would have been unbusinesslike on our part not to have taken that

(Testimony of R. M. Cobban.)

precaution, and in the case of the Cyrs I am not certain whether we gave them the money on their loan or whether it was sent, as I have stated, to the land office for the express purpose for which it was borrowed.

Q. Sent to the land office to pay for the land?

A. If it was sent there, it was sent there at their request and for that express purpose, as I have stated.

Q. In how many cases did you follow that businesslike method of sending the money directly to the land office, if you can recall?

A. It was done a great many times.

Q. To pay for the land? A. Yes, sir.

Q. Sent directly to the register or receiver or what, or to the United States land office?

A. It was usually sent to the United States land office and paid in there in the presence of the parties and for them absolutely, but the proposition was not indulged in as a rule of handing the money to parties with whom I was not acquainted, but it was used and paid into the land office for the express purpose, and at their request.

Q. In such cases as that would you send your check?

A. No, I hardly think so; I think it was currency as a rule. It is possible I may have used a check sometimes, but I think not. I think the price was paid in at the request of the parties, and perhaps by my own suggestion; I may have suggested that somebody would take the money down for them and pay it into the land office for their benefit.

(Testimony of R. M. Cobban.)

Q. There were various ways by which the money could reach the land office here in Helena from Missoula, by check or by the currency or by sending it by somebody that you had confidence in to pay it into the land office?

A. Oftentimes I would send parties here on purpose to see that the money was used for the express purpose that it was borrowed for.

Q. So that in all of those cases the entrymen or entrywomen would not handle the money themselves?

A. It was—

Q. It was used for their benefit—

A. It was practically handled by them, but it was under an understanding with them. We paid the money in for them instead of their handling it themselves. It was their money in every sense of the word, and it was simply our precaution in a business manner to see that the money was used for just what it was borrowed for.

Q. I show you Complainant's Exhibit No. 103. Now, do I understand you to say that you had made arrangements with Levi Cyr, when you had caused this money to be paid into the land office for his benefit in the purchase of this land, that he was afterwards to secure you by a mortgage? A. Yes, sir.

Q. When did you make that arrangement with him?

A. Well, it was prior to the time of sending the money up to the land office; I don't remember just what time it was.

(Testimony of R. M. Cobban.)

Q. Do you remember who was present?

A. No, sir, I do not; I rather think—

Q. What were the terms of this mortgage?

A. It was similar to the others. Mr. Cyr also offered to turn in his logging outfit if I wished it; he had horses and wagons and harness, a logging outfit that he offered to give me in addition to this land, if I wished it.

Q. Were you to charge him one hundred dollars for locating him? A. No, sir, I was not.

Q. Why didn't you charge him one hundred dollars?

A. Because I had nothing to do with his location in any way, shape or manner.

Q. Now, when did you change your mind or did he change his mind in regard to not giving you a mortgage?

A. Well, I understand that after or about the time he proved up, from his evidence in the matter, from his statement of the matter here, that he had tried to get a logging contract and failed. He had talked of that with me, that if he could get a logging contract, he had the teams and outfit, and if he could get a logging contract he would take it, and from his evidence in the case here it seems he failed to get the logging contract and he came to me ready to fix the matter up, and I made him an offer to purchase the land, and instead of giving the mortgage, he concluded to give the deed.

Q. Now, as a matter of fact, the date of the final

(Testimony of R. M. Cobban.)

proof was the 18th of December, 1899. Are you able to state as to whether or not, at the time of the final proof, you were here yourself?

Mr. WALSH.—He has already answered that.

A. I have no recollection of being here at that time, but I was in Helena very often during the season, and, in fact, for the last four years my business has brought me here very often, and I might have been in town, though I have no recollection of it.

Q. How do you account for the fact, Mr. Cobban, if a distinct agreement had not been made between you and Mr. Levi Cyr, that immediately after obtaining final receipt he was to convey to you, that at once after leaving Helena he went to Missoula and this deed was drawn up there?

Mr. BICKFORD.—We object to that as not proper cross-examination, and for the further reason that the witness is not obliged to account for the action of Levi Cyr or anybody else, nor does it appear that he went immediately to Missoula for the purpose of having the deed drawn up, nor that the deed was immediately drawn up.

A. In answer to that, I would simply state that the deed itself does not show that it was drawn up immediately, and that there certainly was no understanding between Mr. Cyr and myself that he was to convey that land to me, that he was to sell it to me or that I was to buy it. There was no understanding, direct or

(Testimony of R. M. Cobban.)

implied, that I was to do that. In four days, or in a day or two things may develop by which a man will change his mind very materially.

Q. Did you know of the fact of this deed being drawn up in Missoula on Mr. Cyr's return from Helena?

A. I cannot tell you now; I don't recollect when that deed was drawn up. Mr. Cyr may have sold to me the next day after he proved up for all I know. I do not know what day he may have agreed to sell to me.

Q. You have no recollection as to the talk you had with him?

A. I have in a way, yes, sir. I recollect quite well his coming into the office and the general talk about the claim, and I remember that one of the things he stated was that he was unable to get a contract from the Blackfoot Milling Company, from whom I was in hopes that he would be able to get a contract.

Q. Did you understand that that information had come to him between the 18th of December and the 22d, the day that the deed was executed?

A. I don't know that I asked him that at all.

Q. Did you understand that such information had been received?

A. I did understand that he had received such information, but the dates I have no means of knowing.

Q. That he had received the information after he had made his final proof?

(Testimony of R. M. Cobban.)

A. I don't know that he even stated that, but he stated to me that he was unable to get a logging contract from the Blackfoot Milling Company.

Q. Do you know where he was living at the time?

A. I think he was living at Quigley, or was there part of the time; his logging outfit, as I understood it, was at Quigley.

Q. And that was about forty-five miles from Missoula, was it not?

A. I hardly think it is as far as that; I should judge about thirty-five miles from Missoula.

Q. Isn't it true, Mr. Cobban, that after the 18th of December and between the 18th and the 22d, you caused a deed, of which this is a true and correct copy, to be prepared and that you delivered the same to Mr. Cyr, with instructions given him that he was to go to Quigley and have his wife join with him in the execution of that deed and that he was to return it to you?

A. Well, I don't think the statements of facts is true. I have no reason to doubt that I may have prepared that deed, and it certainly had to be signed by his wife, and as it shows on its face it was acknowledged at Quigley. But that is not an unusual drive, to Quigley, in a day, and sometimes it has been made up there and back to Missoula in a single day.

Q. And you did receive the deed from him, did you not, after it had been executed by himself and wife?

A. Yes, sir.

Q. And how much did you pay him?

(Testimony of R. M. Cobban.)

A. I don't recollect the amount that was paid him.

Q. Did you pay him by a check?

A. I think that I did.

Q. Have you got the check?

A. I think I can find it; I will make a memorandum and make a search to see.

Q. To facilitate the matter, he says that it was a check on the Western National Bank of Missoula?

A. In that Mr. Cyr would be mistaken anyway, because I had no bank account at the Western National Bank at that time. If I gave a check, it was probably on the First National Bank of Missoula.

Q. Very well. But you can not hand it to me now?

A. I can not, but I will make make a search for it.

Q. When the deed was delivered and the check paid, that was the amount of money and all the money that Mr. Cyr got for his land, was it not?

A. I think that there was more than one check; that is my recollection, that Mr. Cyr was paid in two or three sums; I am not positive, but I think so. I think Levi Cyr was paid in more than one payment.

Q. Do you mean that he had received payments prior to the 18th of December?

A. No, sir, but I think for some reason—I don't think that that deed was delivered to me—I think that there was some reason, either I didn't have the money on hand or for some reason that there was a delay; that is my recollection of it at least.

(Testimony of R. M. Cobban.)

Q. If it was paid in more than one check, you would have them? A. I think so.

Q. And the aggregate was how much, as you recollect now; I mean over and above the amount that was paid into the land office in payment for the land—that was paid him after the execution of the deed?

A. I am not positive about that, but my recollection is that Mr. Levi Cyr got something like two hundred dollars in addition to the loan that I had made to him.

Q. You will find out, will you, please, definitely?

A. I will try and look the matter up.

Q. With reference to his cousin, Vital Cyr, how much did you pay him?

A. Well, my recollection is that I paid them about the same; the transactions were simultaneous, and they were practically the same, except that I think the date of the deed may be a little different. I think that Vital Cyr delivered his deed at once.

Q. This deed is made in Missoula, and acknowledged before Mr. Smith on the 22d, four days after the final proof here in Helena. You did not return with these men, did you?

A. I have stated that I have not any recollection of it; I don't think that I was here with them at all. I may have been in town, but I don't think I came with them or returned with them, though it might have been the case.

(Testimony of R. M. Cobban.)

Q. Now, this deed, he being an unmarried man, was acknowledged and cleaned up at once, was it not?

A. I think so.

Q. Now, how do you account for the fact that, if there had not been a prior agreement made between you and Vital, that after his final proof was made on the 18th and the money was paid into the land office, as you have stated, that he executed the deed on the 22d?

A. Well, as I stated before, the two, Vital and Levi, were co-operating together. They expected to take the logging contract together and they expected to operate together, and there certainly was no agreement between them and myself, direct or implied, that I should purchase their claims. After their proof, and after their return to Missoula, they came to comply with their agreement with me to give me security on the land, and at that time I made them an offer to purchase their land. I think that they made investigation whether they could sell it elsewhere after they had found out that they could get no logging contract.

Q. Do you wish to be understood as saying that the ascertainment of the fact that they could not make this logging contract was found out between the 18th and the 22d of December?

A. I do not state that at all; I don't know when that was found out, but I know that they did discuss that proposition with me.

Mr. BICKFORD.—And the testimony shows that

(Testimony of R. M. Cobban.)

they made the investigation between the 18th and the 22d, as shown by the testimony of both Levi and Vital Cyr.

Mr. MAYNARD.—Very well. The testimony speaks for itself.

Q. The testimony shows that Levi had found out long prior to his making the final proofs that he could not make this logging contract, and that I then asked him why he went on and made the final proofs after ascertaining the fact. You recall that, do you not, Mr. Cobban?

A. Well, I think there was something of that kind in the testimony; I don't remember just what it was.

Q. So that that was out of the question before the final proof day came. Now, isn't it true, Mr. Cobban, that you had had this talk with Vital, that he was to go to Missoula and deed to you?

A. No, sir, I had not.

Q. You had no talk with him at all?

A. No, sir, no talk on the proposition of buying their claim until after their proof was made.

Q. You expected that he would go to Missoula and mortgage?

A. I certainly did; I expected he would go there and secure the amount of money that I had loaned him.

Q. But, as in the other cases, they made up their mind that they would deed to you?

(Testimony of R. M. Cobban.)

A. I made them the offer to purchase their land. I don't know that they had made up their mind to deed to me until I made them the offer.

Q. Levi says in his testimony on page 2046, "Vital told me that he got one hundred dollars clear of expenses." Is that the amount that you had paid him?

A. I stated that I did not remember exactly the amount; I thought it was more; I stated that I had the impression that it was about two hundred dollars that they each received, and yet I am not positive as to that.

(By Mr. BICKFORD.)

Q. Do you remember that one of the Cyrs only proved up on eighty acres, Mr. Cobban?

A. Well, I think one of them was only a small claim.

(By Mr. MAYNARD.)

Q. You remember that that was in the case of Levi, do you not?

A. I don't remember which one it was.

Q. You remember that the entry had been made for the full one hundred and sixty acres?

A. Yes, sir.

Q. And that you became satisfied that it was not profitable for you to make the loan on more than eighty acres, and therefore the eighty acres was dropped out of the case?

Mr. BICKFORD.—We object to that, that it is not the testimony that Mr. Cobban had become satisfied

(Testimony of R. M. Cobban.)

that there was not more than eighty acres that was any good; the testimony does not show anything of that kind.

Q. Well, that was the fact, was it not, Mr. Cobban?

A. I think my investigation of the lands that were sought to be mortgaged was such that I did not think the lands were worth the amount that he asked for as a loan, and I think I so informed Mr. Cyr, that I would not consider it worth the amount of money that he would have to pay the Government for it, and would not want to take it as security, and I think that it may have been that that influenced him.

Q. Don't you know that that was the sole reason?

A. No, I don't.

Q. But the money was to be paid into the land office by you for the land?

A. Certainly, but then I don't know that that was the sole reason for his dropping it. He was not bound to carry out his loan with me; he could have gone and got the money elsewhere, or he could have sold his outfit; there were several ways that he could have gotten the money.

Mr. BICKFORD.—We object to the counsel arguing with the witness as to the reason; that is not pertinent to the issues of the case, and it not proper cross-examination.

Q. I mean that so far as your connection with the case was concerned, it depended entirely on the amount

(Testimony of R. M. Cobban.)

of money that you were willing to pay into the land office for the purchase?

A. I was not willing to make him a loan on eighty acres, that is my recollection now—on eighty acres that he had filed upon.

Q. And it was dropped when you so informed him, and final proof and payment was made for eighty acres instead of the one hundred and sixty which he had filed on? A. I think that is the case.

Q. Now, have you a recollection as to whether or not Vital was paid by check or in currency?

A. I could not tell you without looking it up.

Q. Will you be kind enough to look that up, if you please? A. Yes, sir.

Q. I next call your attention to the purchase by you of the lands of Abraham J. Jemison. I will ask you if you ever had any personal acquaintance with Mr. Jemison. He lives up on the Blackfoot?

A. Well, no, I had known him before that season.

Q. Did you know that he was a brother of Albert's?

A. Abraham J.?

Mr. BICKFORD.—Didn't you know that he was the father of Albert?

A. My impression was that he was Albert's father.

Q. No, I guess not; he says he is thirty-nine years old.

A. Well, I had no acquaintance with Abraham J. before that season.

(Testimony of R. M. Cobban.)

Q. Do you recall any of the facts and circumstances connected with this purchase?

A. Not particularly.

Q. I show you Complainant's Exhibit No. 27. Have you any memorandum in connection with this case in your possession?

A. I don't think I have here.

Q. Did you find any memorandum?

A. No, sir.

Q. No checks?

A. I didn't look for checks; I thought you were not ready for checks yet.

Q. Did you have any dealings whatever with Mr. Jemison and his wife previous to the day that they proved up?

A. Well, I am not positive, but I think that I had; I think that I made them the loan.

Q. You have no positive recollection of any of the facts connected with this case?

A. Not particularly.

Q. Well, if Albert located them and brought them down to your office, and Mr. Catlin made out the filing paper, and the money was paid into the land office for the purchase of the lands for Jemison and his wife, and on the same day that the final proofs were made they sold to you and they each received one hundred and ten dollars, what have you to say as to whether or not in that case there was an agreement made by which that should be done?

(Testimony of R. M. Cobban.)

A. Well, I will say positively that there was no agreement with those parties or anyone else, before final proof was made, that they were to receive one hundred and ten dollars or any other sum from me; and not only was there no agreement from me, but, as I stated before, those in my office working for me or having anything to do for me in any way were instructed positively that there could be nothing said that would lead those parties to believe they were to sell to me. Albert Jemison in particular, the first work that he did for me, was particularly cautioned not to say anything to any entryman that would lead them to believe that I would buy their claims or that there was any offer out for them.

Q. Mr. Cobban, I read from page 1194—

Mr. BICKFORD.—We want to be understood as objecting to the reading into this record of the record already made by counsel on the other side, as not cross-examination, but mere multiplication of words and multiplication of the cost of the proceeding here, and we would ask the Master at this time to confine counsel to the propounding of questions and exclude the reading of these questions.

Mr. MAYNARD.—Would you be willing to have me assume, without reading the testimony?

Mr. BICKFORD.—With almost any other lawyer on earth I would be willing for him to assume. With you, no.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—Then it is necessary to read the testimony.

Mr. BICKFORD.—I don't think it is at all. Ask questions.

Mr. MAYNARD.—If I cannot assume that the testimony is so and so as given here before, and call his attention to it on that basis, then in order to direct his attention to the testimony I have got to read it.

Mr. BICKFORD.—No, you have not got to read it. All you need to do on earth is to ask questions. It is not your lookout whether he disputes or affirms what your testimony is. It is your testimony that you are reading, and I say it is unfair to the Court, unfair to the witness and unfair to us who represent the other side that this record should be encumbered in this way.

Mr. MAYNARD.—Well, you know, of course, I do not want to encumber. If there is really any basis for your objection, I want to know it.

Q. What I am trying to ask you and what I ask you now, Mr. Cobban, is this: In this record and from the testimony of Mr. Jemison on page 1194 and the following pages—

Mr. WALSH.—We will have this matter settled right here, if the Court please. We want to object to counsel now reading long extracts from the testimony of some other witness, and asking this witness whether that refreshes his recollection about the matter, and we

(Testimony of R. M. Cobban.)

ask the Master to rule whether that is proper cross-examination or not.

The EXAMINER.—I don't think I have the power to rule on a matter of that kind.

Mr. MAYNARD.—I should be glad to act on the suggestion of the Examiner.

Q. Now, I will ask you this question and see what objection there is to it. On page 1194 and the following pages Mr. Jemison says that he received the money from you to pay for the land on the day of the final proofs, and that on that same day he and his wife conveyed their lands to you, and that each received one hundred and ten dollars on that day for their land, and that was all that they received, all that they made out of the transaction. Now, I ask you how is it, if that is so, that you can say that there was not a prior agreement made between you and themselves that such a transaction would be carried out?

Mr. WALSH.—We object to that question as not proper cross-examination.

Mr. MAYNARD.—Why?

Mr. WALSH.—On the ground that it is utterly immaterial if it was so, and the fact that they testified to it is a matter that cannot be put as a basis of cross-examination of this witness.

The EXAMINER.—Let him answer.

A. Well, the fact that I may have purchased on the

(Testimony of R. M. Cobban.)

day that final proof was made is no evidence that there was any preconceived arrangement, because there certainly was none, and it would be very natural that—I certainly would not make any offer—

Mr. WALSH.—Now, you want to speak about the one hundred and ten dollars; how is it that you happened to pay them one hundred and ten dollars when there was not any preconceived arrangement—how do you reconcile that fact?

A. The amount that I paid them was the amount that we would agree upon when I made them an offer to purchase, and the amount that I paid for those claims was based largely on the value of timber lands in that country and what I could acquire timber lands for by scrip at the very time that I was making these purchases. The purchase price of scrip was about three dollars and sixty cents an acre. I could afford to pay between five and six hundred dollars for a claim, and the fact that I paid between one and two hundred dollars for the claims made them cost me just about the same as they would if I went out and took scrip and scripped the land. There seems to be a great deal of stress laid on the fact that these people received about one hundred dollars. In the neighborhood of one hundred dollars in addition to the amount that was loaned to these people was all that the timber lands were worth—from one to two hundred dollars, that is, as compared with what I could get it for under scrip.

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—When you say scrip, what kind of scrip do you mean?

The WITNESS.—I mean this Forest Reserve Lieu Land Scrip.

(By Mr. MAYNARD.)

Q. I will just say to you that the reason why the stress is laid upon the fact that these persons were paid one hundred dollars and their expenses—

Mr. WALSH.—This is no question. There is no use in stating this to the witness; he does not care for your explanation at all. You have got a theory about this matter, but it does not interest the witness at all.

Mr. MAYNARD.—Well, I want to tell him that the stress is laid on that because that is the theory of the Government, that each one of these parties received this amount of money because it was agreed that they should receive this amount of money.

Mr. BICKFORD.—That is about the fiftieth time that you have stated that in the record, and we are paying for it.

Mr. MAYNARD.—That is in answer to Mr. Cobban's criticism about the stress.

Q. You say you had no talk with Mr. Jemison and his wife prior to his final proof, in regard to this transaction?

A. In regard to the purchase of their claims?

Q. Or anything about it.

(Testimony of R. M. Cobban.)

A. I haven't said that at all.

Q. Didn't you say that you had no recollection of having any conversation with them?

A. I have no clear recollection of any conversation, though I think I must have had a conversation in regard to the loan. I think it is almost positive that I did, because I talked with nearly all, if not quite all of those people, in regard to making them a loan, but there certainly was no proposition made to them by which they were to sell this land to me.

Q. Well, Mr. Cobban, if Mr. Jemison tells the truth, that he had no conversation with you prior to the day of getting the money on the day that he proved up, and you are in doubt as to whether any conversation was had with him, how could there have been any agreement made with him by which he was to obtain a loan from you?

A. Well, could it not have been made on the very day that he did get the loan, as he testifies to?

Q. Very well. But where was he to get the money from at the time he made his filing?

A. I don't know. I don't know whether we made him a loan of that amount or not, and another thing, in the Missoula land office it was not required to pay any money at the time the filing was made; it was not necessary that they should have any such money.

Q. Then, do I understand you that your theory is in this Jemison case that he was to proceed from the beginning to the end, making his filing and going through

(Testimony of R. M. Cobban.)

all of the expenses incident to taking up land, and wait until the very day came in which the payment must be made into the land office before he knew where he was going to get the money?

A. He certainly did, unless he had made the arrangement to make the loan.

Mr. BICKFORD.—We move to strike out the question and answer for the reason that the question assumes a theory not borne out by the statement of the witness or by any testimony in the case, and that it calls for a conclusion of the witness and not for a statement of fact, and because it is not proper cross-examination.

Q. Will you look out those checks and present them in the morning, if you please, that I called your attention to? A. Yes, sir.

Whereupon further hearing was adjourned until Saturday, July 12th, 1902, at 10 A. M.

Saturday morning, July 12th, 1902, at ten o'clock.

The hearing was resumed pursuant to adjournment.

R. M. COBBAN, resumed the stand, and was cross-examined further as follows:

(By Mr. MAYNARD.)

Q. Did you succeed in finding the checks, Mr. Cobban?

A. Yes, sir, I found some, or the stubs of checks. I found no checks in the case of the Cyrs, but I found some stubs. I found that on December 22d, I paid Vital

(Testimony of R. M. Cobban.)

Cyr, and gave him a check for $97.25; and gave Levy B. Cyr, a check on December 22d, for $31.25; and on December the 26th, I gave him another check for $50.00.

Q. This represented the amount of money that you paid him, over and above the amount that was paid into the United States land office?

A. I cannot say as to that. I think not. I think there was some cash paid to them in addition. I am quite certain that there was.

Q. But you have no recollection as to when that was paid, or how much, have you?

A. No, sir, I have not.

Q. Well, tell us what is the next that you have.

A. I was looking to see. I gave a check to Emma Dildine. I have found that. I didn't find the check itself, but I found the stub.

Q. What was that?

A. It was a check for $115.00.

Q. When was that dated?

A I will give you it from the memorandum that I have. October 9th, check for $115.00.

Q. Well, have you other checks there in your possession, with reference to those entrymen and entrywomen?

A. Not as to those.

Q. I didn't know but what if you had you could give them to us now. A. No, I cannot find them.

Q. Now, take the case of Mr. Wheaton, Mr. Cobban, Did you know him at all?

(Testimony of R. M. Cobban.)

A. I did not, until during that season—during the transactions.

Q. Well, now I show you Plaintiff's Exhibit No. 69. It is a deed to you where the consideration named is $800.00. Are you able to state what was the true consideration? A. Not exactly, no, sir.

Q. You don't recall any of the facts and circumstances connected with that? A. Yes, sir, I do.

Q. Well, what were they?

A. Well, I remember of making a loan to Mr. Wheaton. I remember of making investigations to ascertain about the value of the claim that he had, to see whether it would justify a loan; and finally, after he had proven up, of purchasing the claim from him.

Q. From the record, page 886, and from the deed it appears that the final proof, and the deed were made upon the same date, namely, the 27th day of October: and that the money was paid into the land office by Mr. Catlin; and he says that he (on page 1242 of the record) made, executed and delivered a deed of this land to Mr. Cobban and received two fifty dollars bills, and a ten dollar bill. Now, are you prepared to say that that was not—that the land was not entered and a deed executed and delivered to you for this land, by reason of that prior agreement, made with Mr. Wheaton?

A. Most assuredly not; there was no prior agreement in any way, shape or manner. Mr. Wheaton, after proving up, had a perfect liberty to sell that land to whom he pleased, or do whatever he pleased with it.

(Testimony of R. M. Cobban.)

The only consideration in the world was the fact of his securing the loan, and his obligation to me. That is all that there was of it.

Q. Do you recollect of ever having had any talk with him on the subject? A. I do.

Q. When did that take place?

A. It place about the time of his entry.

Q. About the time of his entry? A. Yes, sir.

Q. What fact enables you to recall that conversation?

A. Well, I remember the man; I remember his appearance. I remembered the man quite well.

Q. And where did the conversation take place?

A. In my office in Missoula.

Q. Who was with you?

A. That I could not say.

Q. What was the conversation?

A. The conversation was on the lines that he wanted to take up this claim, but wouldn't have enough money to pay for it, and wanted to know if he could make a loan. The matter was discussed, and I finally told him we would loan him the money. It was on the same terms as heretofore stated with other claims. The loan was to be a six months' loan. The rate of interest was fixed I think. It was one per cent per month.

Q. Do you testify to this as a distinct recollection of this specific conversation that you had with Mr. Wheaton? A. I do.

(Testimony of R. M. Cobban.)

Q. And on the basis of what you deemed to be the general policy of your office?

A. No, sir; I know that I had that conversation directly with Mr. Wheaton.

Q. You, yourself? A. Yes, sir.

Q. Well, was it left open as to whether or not he would get the money?

A. As to whether he would be able to furnish the money?

Q. No, as to whether he would take the money from you or not?

A. Well, it was understood that he would want the loan; and his case was the same as the others, provided the security offered was sufficient to justify.

Q. Do you remember whether you made an examination of the land or not? A. I do.

Q. Where was the land?

A. Well, I cannot tell you now the description of the land; it was on the west side of the Blackfoot river. That is my recollection about it. It wasn't very far from Mr. — up in there near Belmont Creek.

Q. Up where?

A. Up near Belmont Creek, on the west side of the river.

Q. Did you yourself make a personal examination of the land? A. No, sir.

Q. Who did?

A. Some man in my employ; I presume Mr. Hambly.

(Testimony of R. M. Cobban.)

Q. Do you remember of his making a specific report on the Dildine entry?

A. He made a report on all the lands I asked him to examine.

Q. How many did you examine?

A. How many did I examine?

Q. Yes, sir.

A. Probably four or five hundred sections.

Q. And you ask him specifically in regard to these Dildine claims?

A. I don't know that I called his attention to the Dildine claims, any more than any other claims that I asked him to examine and report on.

By Mr. BICKFORD.—This includes, of course, lieu land selections, Mr. Cobban?

By the WITNESS.—Yes, and a great deal of other land that I never did secure, and never bought.

Q. Well, all that you wish to be undestood as swearing to, Mr. Cobban, is that you were satisfied that the Dildine entry was a good one.

A. Why, I certainly considered the timber on that claim as good security for the land, that was asked.

Q. Well, do you recollect of seeing him at any time after you had this conversation, up to the date of final proofs, on the 27th day of October?

A. I have no recollection of seeing him during that time.

Q. Well, have you any recollection of seeing him on that day? A. Yes, sir, I have.

(Testimony of R. M. Cobban.)

Q. What took place on that day?

A. He came in to make his final proof and to borrow the money. I loaned him the money and I wasn't satisfied to turn the money over to him directly, and I sent the money to the land office by Mr. Catlin, with his consent, and with his understanding of the matter. I didn't know but what Mr. Wheaton—I had found out that Mr. Wheaton was in the habit of getting drunk sometimes, and I didn't know but what he might use the money for the purpose for which it was not intended. And for that reason Mr. Catlin paid the money into the land office at his suggestions, and with his consent for that purpose.

Q. In the meantime who had attended to the publication of the notice?

A. I don't know. I suppose the land office. Which it was their duty to do.

Q. Well, who did pay for the publication?

A. I presume that Mr. Wheaton paid for it himself. However, it is possible that we may have paid for it under his instructions.

Q. You had no knowledge whatever of Mr. Wheaton having done anything at all in regard to the payment, had you, previous to the—

A. Mr. Wheaton certainly either attended to it in person, or we attended to it for him, by his instructions. If we paid for it, it was simply under his instructions, as a part of the loan, and to attend to it for him. But

(Testimony of R. M. Cobban.)

I think it is more than likely that Mr. Wheaton paid for it himself.

Q. Well, in this case, you were to get a hundred dollars for locating him?

A. Yes, sir, and the expenses. There was always a good deal of expense attached to those matters on my part, in the examination of the land, and estimating and finding out whether the claims were worth the loan.

Q. And that was to be added to the mortgage?

A. The hundred dollars was to be added to the mortgage, yes, sir.

Q. But straightway, as a matter of fact, I mean on the same day after the money was paid into the land office by Mr. Catlin, and the receiver's receipt was issued, Wheaton went back to your office and conveyed the land to you?

A. Well, I have no recollection of whether it was the same day or not, but I think it was. The point was right here, I expected him to carry out his part of the agreement to secure this by mortgage. It was the most natural thing in the world. He was leaving there, and came to my office for that purpose; and instead of executing the mortgage, I made him an offer for the land, and instead of his making a mortgage he gave me a deed to the land on my offer to him.

Q. And you paid him a hundred dollars?

A. I don't remember the amount I paid him?

Q. Well, have you any reason to doubt his testimony

(Testimony of R. M. Cobban.)

where he says he received from you two fifty dollar bills and a ten?

A. I have no reason to doubt it at all, because I think that was the amount that I was paying for the land, between five and six hundred dollars, and that would probably, after repaying the loan, leave that amount.

Q. Well, you had in your mind, from the time that Mr. Wheaton made the application to you for a prospective loan, as you talked about at the time of his filing. You had had in mind all the time, of making an offer for the land after he had proved up, had you not?

A. I was in the market to buy timber land. I had no idea of making any offer in any way, shape or manner, or of violating the law, or to make any contract with the man, either directly or indirectly, or through anyone in my employ; but at the same time, if the man had a good right to sell, and I was still in the market to buy, I would make an offer—I would consider that I stood in the same position that any other person would sustain, and make them an offer to purchase the land.

Q. So that, going on that general proposition, you had in mind this offer to Mr. Wheaton on this 27th day of October?

A. No, sir, I did not, because I did not know that I would be in the buying business at that time. I was only buying from day to day throughout that time. However, if I was in the market for buying timber at that time, I saw no reason why I could not make an

(Testimony of R. M. Cobban.)

offer to any of those people when they had timber lands to sell.

Q. And that is you meant on the day—after they had made their final proofs?

A. After they had made their final proof. Whenever any person has proved up on his land he has a perfect right to sell the timber; and whenever any person had a timber claim and had a right to sell it, I considered that I, as a citizen of the United States had just the same right as any other person had, to make them an offer to purchase their land.

Q. And this dated from the time of the issuance of the receiver's final receipt?

A. Yes, sir, certainly.

Q. And from that moment you felt that you were at perfect liberty to engage with those people, that you had loaned the money to?

A. I know that I was at perfect liberty to make them an offer for the purchase of their land; and if they saw fit to accept my offer, I saw no reason why they shouldn't sell to me the same as to anyone else.

Q. Yes, sir.

A. There was no obligation on their part to do so. There was no promise made to them, and no agreement in any way, shape or manner, that I would purchase the land, and I felt at perfect liberty to make an offer, as I did in the Wheaton case.

Q. Yes, and what you have now testified to as applicable to the Wheaton entry, would be true, would it

(Testimony of R. M. Cobban.)

not, from your standpoint in the case, of each and every one of these entrymen and entrywomen that are named in the bill of complaint in this action, where the record shows (and by the record I mean the certified copies of the deed), and the testimony of the officials, showing the issuance of the receiver's final receipts and from the testimony of the entrymen and entrywomen, that where the filing was made, and sixty days thereafter or thereabouts, the money was paid into the land office, for the purchase of this land, either by you or by someone in your employ, that is Mr. Catlin, or Major Pound, or Mr. Griswold, or someone; and the receiver's final receipt issued; and thereupon, on that same day, deeded to you, the same would be true of these entrymen as in the Wheaton case.

By Mr. WALSH.—We object to that as not being proper cross-examination, and altogether unintelligible, and calling for a conclusion from the witness, and no inquiry for a fact.

By Mr. MAYNARD.—Well, I will withdraw the question. Wouldn't the same thing be true in each and all of the cases where the payment was made and a deed was made on the same day?

By Mr. WALSH.—We object to that as not being proper cross-examination, and as being unintelligible; "would the same thing be true" doesn't give any idea to the witness at all.

A. There was no distinction. There would have

(Testimony of R. M. Cobban.)

been no distinction in my mind as to what my rights were between any of these people proving up on their claims, that are mentioned in the bill of complaint, and any other person proving up that I had never seen or heard of. I considered the proposition of loaning to these people was a transaction entirely separate and apart from the buying of the land, and that I had a right to make any man an offer to purchase his land whenever he had a receiver's final receipt.

Q. Well, isn't it true, Mr. Cobban, that you advanced the money to Mr. Wheaton, and to these other persons, that stand on the same footing with him, with the express understanding—with the express intention in your mind of getting the land that they entered—buying the land that they had entered?

By Mr. WALSH.—That is objected to upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. No, sir, it is not. The proposition was on the straight loan proposition, if—there is no question but what I may have thought that it would put me in a stronger position, when I was in the market, and they wanted to sell, it might give me a little—I knew the circumstances, and I knew what the timber was, and I may have thought something of that kind; but there was no intention—there was no thought of entering into any agreement with these people whatever to purchase their claims.

Q. But you may have thought the fact of your loan-

(Testimony of R. M. Cobban.)

ing the money would place you in a better position than—would give you greater privileges in the purchase of this timber.

By Mr. BICKFORD.—We object to that, because it is not proper cross-examination; and what the witness may have thought prior to the transaction, which is here complained of, is not material to the issues in this case.

A. Eventually, it would naturally bring me into touch with those people, and I would know whether or not they desired to make a trade. I would be more apt to learn of those facts from the business relations that I had with them.

Q. You knew, as a matter of fact, that they had entered into an express agreement with you to return to your office at once after receiving the receiver's final receipt, for the purpose of arranging with you one way or the other, did you not? A. No, sir.

Q. Well, you knew that they had agreed with you, and you had made them promise that they would come back to your office and secure you for the money that they had borrowed of you?

A. I certainly expected them to return and secure me for the loan.

Q. Well, it wasn't a mere expectation on your part; it was a promise that you exacted from them, was it not? A. Yes, it was.

Q. Yes.

A. But I don't know that I asked them to return im-

(Testimony of R. M. Cobban.)

mediately. The loan was a temporary loan to—it was a temporary—to be secured—it was to be fixed just as soon as they could get around to it by their mortgage. Of course they couldn't have given the mortgage before; or at least I supposed that they could give the mortgage at the time. Had I supposed at the time that they had a right to give a mortgage on the lands before making their entry, that would have been done. In every case where I loaned them the money.

Q. But you didn't suppose that you had a right to do that?

A. No. So I simply took their obligations and they gave the notes for the same when the money was given to them, that was to be secured by the mortgage as they had proved up.

Q. But, as a matter of fact, it was done in no one case—in no one case was a mortgage given.

By Mr. BICKFORD.—We object to that as irrelevant and immaterial, and not proper cross-examination.

Q. —by any of the entrymen or entrywomen who are named in the bill of complaint in this case.

By Mr. BICKFORD.—(Continuing.) It is a question that has been propounded to the witness a dozen times, and answered by him an equal number of times during the cross-examination by counsel for the government.

A. I don't suppose they would be in the bill of complaint if a mortgage had been executed, and I hadn't purchased the land.

(Testimony of R. M. Cobban.)

Q. Answer the question, please, Mr. Cobban.

A. I think that answers it.

Q. In no—it so happened that in no case had any person named in the bill of complaint here given a mortgage to you? A. No, sir.

Q. Now, you say that a note was given for this temporary loan until it could be fixed up. Can you name any case in which that was done; where you know positively that such a note was given.

A. There were notes given in a great many cases.

Q. Well, can you name one?

A. Yes, sir, in Mr. Wheaton's case one was given.

Q. Wall, name another.

A. Well, I don't know as I care to.

Q. Don't know as you care to?

A. I don't know as I can in all cases. There were some cases that it was not done in.

Q. Then, as I understand it, you now have no recollection of your ever having received a note to provide for this temporary loan in any case named in the bill of complaint, excepting the case of James W. Wheaton?

A. I received a great many of those notes; but I will not attempt at this time, on oath, to swear just which ones gave those notes.

Q. Well, do you swear that James W. Wheaton gave you such a note? A. Yes, sir, he did.

Q. What was that note?

By Mr. BICKFORD.—What could a note be but a note?

(Testimony of R. M. Cobban.)

A. I don't remember the amount.

Q. You don't remember the amount?

A. No, sir.

Q. How long was it for?

A. Well, it was more the nature of a receipt, stating the amount of money that had been given to me, and a statement that he would secure the same by a mortgage on the property as soon as he had title to the land.

Q. When was that given?

A. That was given on the day that the money was given to him for the proof.

Q. That would be on the 27th of October, if that was the day that the final proof was made?

A. Yes, sir.

Q. And the money was paid into the land office by Mr. Catlin you say?

A. At Mr. Wheaton's suggestion.

Q. Why did you exact this agreement from Mr Wheaton other than anybody else?

A. Because—the exaction that Mr. Catlin should pay the money in there—

Q. Under this receipt?

A. I haven't so stated.

Q. Well, what did you state?

A. I stated that in this particular instance I remembered clearly that I took such a note. I took such a note from a great many of the persons.

Q. You say it was in the nature of a receipt?

(Testimony of R. M. Cobban.)

A. Yes, sir, it was.

Q. That he had received $400.00 to pay into the land office?

A. And it there recited what it was for, and that he was to secure that with a note by a mortgage on the land as soon as he received the receiver's final receipt.

Q. Did you write that up yourself?

A. I presume that I did.

Q. Do you know whether you did or not?

A. No, I do not.

Q. Have you any recollection—you don't know but what Mr. Pound might have written it?

A. There is no question but that I wrote it or dictated it.

Q. If you wrote it, or dictated it, who would you dictate it to?

A. My stenographer, if I had one at that time.

Q. Did you have one at that time?

A. I don't remember whether I did or did not.

Q. Did Mr. Wheaton sign it? A. Yes, sir.

Q. When?

A. When the land was purchased by me the obligation was returned to him.

Q. That same day? A. Yes, sir.

Q. You have a distinct recollection of handing it to him? A. Yes, sir.

Q. And that is the only case, of all the persons

(Testimony of R. M. Cobban.)

named in the bill of complaint, where you made a loan of that kind?

A. I know it was done very often; and it was the rule rather than the exception.

Q. And it was in the nature, then, of a receipt, acknowledging the receipt of money?

A. And the obligation to write me up a properly secured mortgage and note.

Q. Do you swear that that was done in more than one case? A. That the receipt—

Q. That a receipt was drawn up and contained such language? A. Yes, sir.

Q. That it was to be secured by a note and mortgage?

A. Yes, sir, it was to be secured by a mortgage and a properly drawn up note secured by a mortgage, on that particular piece of land.

Q. You returned the notes to—these receipts to the persons, when they sold to you? A. Yes, sir.

Q. In each and every case? A. Yes, sir.

Q. You haven't any of those in your possession now, have you? A. No, I have not.

Q. Have you seen any of them since you delivered them over? A. I have not.

Q. Who else had power to deliver over these receipts?

A. Well, I don't know that anybody delivered them over other than myself. Those receipts were taken in transactions that I myself was familiar with.

(Testimony of R. M. Cobban.)

Q. What is that?

A. Those receipts were taken in transactions that I was familiar with. I don't know whether Mr. Pound took any such receipt or not.

Q. You don't know whether he took such receipts or not? A. No, sir.

Q. Well, what do you mean by that?

A. I mean in two or three instances, or perhaps in three or four instances, I might have been out of town when these people came for their loans, that had been agreed upon by myself, or Mr. Pound in my absence was instructed to carry out my agreement with these people and loan them the money. Whether he took an obligation from them similar to the one I took I am unable to say.

Q. Well, then, you mean to say that he might have required no such obligation at all, in cases that he had charge of during your absence.

A. It is possible that he trusted to the word of the parties, that they would come in and secure us, as it had been agreed on their part.

Q. Well, now, if it was a rule that you adopted to require the signature of those parties to such a paper as you have described, isn't it certain that you would have instructed Mr. Pound to require the signature of the same kind of a paper in your absence?

A. I haven't said that it was a rule. I said that in the majority of cases it was done. It wasn't always done

(Testimony of R. M. Cobban.)

by me. If people were strangers to me, or practically strangers, or people that I didn't know much about, as the case might be, it was necessary for me, or I felt that it was, to have some acknowledgment of the matter on their part, otherwise the people would have been, after they had received their receiver's final receipt, practically free, so far as I was concerned, to have gone and sold their claims to other parties.

Q. That is your opinion about it?

A. Yes, sir, they could have mortgaged them to anyone else, and I wouldn't have had anything to show in any way, shape or manner that they were indebted to me.

Q. Well, then, do I understand you that you yourself only required it in cases where the entryman or entrywomen were such that you felt that it was necessary to protect yourself in that way?

A. Perhaps not necessary; but it was really what should have been done in all cases. It was a matter of business. I neglected it in some cases.

Q. Well, do I understand you to say that it was where you had confidence in the people, you didn't require it?

A. Sometimes where I knew people, and knew that they were honest, I didn't require it, because the understanding was that they would come back and secure it in some proper shape. It is a matter of business. I have done a great deal of house building, and loaning of money time and again. I very often advanced some

(Testimony of R. M. Cobban.)

of the money to people that I know are perfectly honest, and trust to their integrity to come and straighten it up later on, perhaps by mortgage or otherwise.

Q. So it was only those that you didn't have confidence in that you required these people to give you a receipt before they executed the note and mortgage?

A. They were strangers to me in a way. I don't know whether they would have attempted to pay or not.

Q. Now, I ask you, did you, or did you not, give instructions to Mr. Pound to require from them their signature to a paper receipt as you have described?

A. I don't believe I have ever given any such instructions.

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and is merely a repetition of the testimony, the witness having been asked the question a dozen times, and he has answered it every time he has been asked the question.

Q. You don't think you did? A. No, sir.

Q. And so far as you know he didn't require any such paper from the persons that he had to deal with?

A. I don't know whether he did or not. Mr. Pound was informed if I was away, if there were any loans that I had agreed to make, Mr. Pound was informed of that fact, and whether or not he took such a receipt, I don't know.

Q. Well, if as a matter of fact you felt that it was desirable, if not necessary, while you were on the ground yourself, to obtain a signature to such paper, from these

(Testimony of R. M. Cobban.)

entrymen and entrywomen, why did you not regard it as even more necessary that your clerk should require such a paper in your absence?

A. I had implicit confidence in Mr. Pound's business judgment, and it was not necessary to give him instructions as to the details.

Q. Did you have more confidence in Mr. Pound's business judgment than in your own?

A. I had just as much.

Q. So that you felt that it was a good business proposition to give him no instructions, and to let him loan the money without such receipt, but that you should require one in your own cases. Is that the way you wish to be understood?

A. I don't think I thought about giving him any instructions about that matter; I considered that he would make the loan on a safe basis.

Q. Well, as a matter of fact you didn't regard it of much importance if you never during the whole season of these purchases, gave him such instructions?

A. I didn't consider it necessary to give him any such instructions.

Q. Well, now, isn't it true, Mr. Cobban, that wherever you yourself, obtained such a paper, or had the person to whom the money—for whose benefit the money was paid into the land office, that it was simply an acknowledgment that so much money had been paid?

A. No, sir, it was not.

(Testimony of R. M. Cobban.)

Q. Received from R. M. Cobban, for the purpose of buying this land, so much money?

A. No, sir, it was not.

Q. You don't mean to say that you had a regular form —a printed form, or anything of that kind that you used, do you? A. No. sir.

Q. And that the sole purpose for which you had them sign the paper, was simply to have something in your possession, which acknowledged the receipt by so much money?

A. I had no regular form for that. But if the time was so that I could, I would set forth the matter clearly, stating just what the arrangement was.

Q. And if you didn't have time, just a short memorandum?

A. Yes, sometimes it might have been a little shorter.

Q. And in a number of cases you didn't use any at all?

A. Sometimes, I didn't think it was necessary, no, sir.

Q. Now, take the case of John Murtaugh. In this case, Mr. Cobban, you gave Mr. Murtaugh, a check on the First National Bank of Missoula for $100.00, did you not?

A. Yes, sir, I did.

Q. Have you the date of that?

A. December 5th, 1899.

Q. What was that for?

A. That check was given as a part of the purchase price of the land that I bought of Mr. Murtah.

Q. And you say was a part of the purchase price? Do you mean to say that you paid him personally any amount

(Testimony of R. M. Cobban.)

of money other than $100.00, not taking into consideration the amount that was paid for expenses into the land office, for the purchase price of the land?

A. I don't know that there was anything more than the amount of the loan paid him; that made up the purchase price of the land.

Q. And as a matter of fact, Mr. Murtah received that money from you, and the money was paid into the land office by you, through Mr. Catlin, and the conveyance of the land by Mr. Murtah to you on the same day, was it not?

A. I don't know that the money was paid into the land office by Mr. Catlin; I don't know whether it was paid in by him or by me.

By Mr. BICKFORD.—I want to interpose an objection at this time to the statement of counsel, as a basis for his question. The allegation of the bill of complaint shows that the final proof of Murtah was made December 4th. The proof of the officers of the land office as given before this court is that the final proof was made on December 4th, 1899. The testimony of the witness is that the check was dated December 5th, 1899; and is an evident effort upon the part of counsel to mislead the witness by his question.

Q. Well, I meant the next morning, the same day or the next morning?

By Mr. BICKFORD.—Why can't you be fair and say the next day?

Q. Mr. Cobban, what is your answer?

(Testimony of R. M. Cobban.)

A. Well, judging by this check, the purchase was made on the following day that the proof was made. As to who the money was paid into the land office by, I am unable to say. But I think that that was paid in by Mr. Catlin, or rather, some one other than Mr. Murtah.

Q. Why do you say that?

A. Because I don't think I would give the money to Mr. Murtah without knowing that it was applied to the purposes for which it was loaned.

Q. Why not?

A. His appearance was enough to show that he would not—to show that he wasn't worthy of trusting very far.

Q. What was the matter with his appearance; what was there peculiar about his appearance?

A. Well, he had the appearance of being a drinking man. He was slovenly in his appearance, and didn't seem to be one that you would want to put too much confidence in.

Q. Well, why, then, if he was such a man, is it that you cared to have any business dealing with him, Mr. Cobban?

A. Because his security was ample for the loan.

Q. How did you know about his security?

A. Estimates had been made of the timber, of the quantity of timber on his claim.

Q. Have you a present distinct recollection in regard to the estimates made on this particular claim?

A. No, sir, I have not.

Q. So, that when you testified with reference to that you were just speaking generally? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. You don't know how much the estimates were?

A. Well, I am quite certain that Mr. Hambly had made the estimates for me.

Q. Do you know who located Mr. Murtaugh?

A. I think that Mr. Jemison did. Mr. Murtaugh had lived in that country for years. I think, however, that Jemison had something to do with placing him on the land —showing him the land.

Q. Don't you know that he did, Mr. Cobban?

A. No, I do not; but I think so.

Q. Did you have any communication from Mr. Jemison to that effect?

A. I might have had. Mr. Murtaugh was to pay him one hundred dollars in addition to the amount of money actually paid him—actually paid in for his expenses in proving up on his land.

Q. So that if you got that hundred dollars from Mr. Murtaugh that was to be in payment for all services necessary in finding him a location; and to pay for the land and the necessary papers for filing, and so on. I mean that that was the fee that you were to get for attending to the work? A. Yes, sir.

Q. And he agreed to do that? A. Yes, sir, he did.

Q. And he was to make a mortgage to you?

A. Yes, sir, he was.

Q. Did you have charge of it yourself—of this case?

A. I had charge of the—I talked to Mr. Murtaugh in making the loan and making the negotiations.

(Testimony of R. M. Cobban.)

Q. And did you have charge of it at the time that the money was paid in? A. I don't recollect.

Q. Well, do you know whether such a receipt was required of him as you stated was required in the Wheaton case? A. I presume it was.

Q. Do you know anything about it?

A. No, I do not.

Q. You have no knowledge of requiring one yourself?

A. I did require a receipt when he made his filing. He asked me for a loan at that time, and it was made to him, and he gave his receipt, and it was stated in it that it was a part of the loan; and it was a part of the loan at that time.

Q. Mr. Murtaugh did? A. Yes, sir.

Q. You said just a moment ago that you didn't know anything about it?

A. I think you are mistaken there.

Q. Well, if you did so testify that you didn't know whether he gave it; that you presumed he did—

A. You asked me when he got the money for his proofs. I am stating the conversation, and the transactions that took place, when he made his filing. They are two distinct times and dates.

Q. Well, do you mean to say that at the time he made his filing you got this paper? A. Yes, sir.

Q. You, yourself? A. Yes, sir.

Q. What became of the paper?

A. I think you have seen it; it has been in the case.

Q. What was the paper?

(Testimony of R. M. Cobban.)

A. It was the receipt from Mr. Murtaugh acknowledging a loan of $10.00.

Q. Of $10.00? A. Yes, sir.

Q. Was there ever any other receipt that you ever exacted of Mr. Murtaugh except that receipt of $10.00 that was at the bottom of that memorandum that was offered in evidence in this case?

A. If I attended to the transaction at the end, I think that I did. But I am not certain as to whether I completed that transaction or not.

Q. And if you did not, you have no knowledge of such a paper being required by anybody, or of his having given one? A. No, sir.

Q. And you have no recollection of having given one yourself?

A. No, sir, but I do know there was a clear and thorough understanding as to the loan, and that Mr. Murtaugh's evidence, as given in the case heretofore was positively false, as evidenced by the receipt itself that was introduced.

Q. So that Mr. Murtaugh, when he says from the beginning it was the distinct understanding, that you were to turn your—that he was to turn his land, immediately over to you after he had made final proof, and that you were to give him a hundred dollars and expenses; when he says that, he is mistaken in that, is he?

A. There was no agreement in any conversation that he had with me in any way, shape, or manner, that there

(Testimony of R. M. Cobban.)

would be any hundred dollar consideration in it for him. And the instructions to Albert Jemison were positively to the contrary of anything of that kind. Mr. Jemison had positive instructions that he should not in any way make any offer, or give any idea that we would purchase the ground, or that I would purchase the ground; and I think that his evidence in the case confirms my own statement.

Q. Well, how do you account for the fact that he did receive this hundred dollars in the shape of a check on the First National Bank for that amount, and that he did sell the day following the final proofs in the case?

By Mr. WALSH.—He has already accounted for that, and coupled with the testimony of Mr. Murtaugh, that this was all done with the distinct understanding that he was to do so?

A. Mr. Murtaugh, I believe, testified to other things, very positively; and immediately, when we produced the written statements, he acknowledged that he was thoroughly mistaken in the matter. I haven't got his written statement of these other things, unfortunately, to introduce. But there was a thorough understanding as to a loan between Mr. Murtaugh and myself, and not one thing to intimate or lead up to the conclusion that I would buy the land from him.

Q. And the only receipt that you ever referred to in your testimony was simply the receipt of this ten dollars, was it not? A. Yes, sir.

Q. I call your attention to the transaction of Mr. Charles H. Jemison on that day. Will you please, in the

(Testimony of R. M. Cobban.)

first place, give me the check that you gave him on or about the 6th of November?

A. I don't think I have got Mr. Charles H. Jemison's check here. I gave him a great many checks. Oh, yes, I have. Here it is.

Q. This check that the witness produces reads as follows: "First National Bank of Missoula, Montana. Pay to the order of C. H. Jemison, one hundred and ten and 00/100 ($110.00), November 6th, 1899, signed R. M. Cobban." Endorsed, C. H. Jemison, pay to the order of First National Bank, Missoula, Montana, Missoula Mercantile Co. Endorsed by bank stamp November 7th, 1899.

For what purpose was that check given Mr. Cobban to Mr. Jemison?

A. I think that check was given in the purchase of—in part payment of the purchase of the land that was conveyed to me.

Q. Do you recall any facts or circumstances in connection with this case?

A. Nothing, only in a general way.

Q. He was a brother of Albert, was he not?

A. I believe he was.

Q. And he was located by him?

A. Why, I don't think so. I think Mr. Charles H. Jemison was as fully familiar with the country in there as Albert Jemison was.

Q. Do you know of the fact that the papers—the filing papers, were drawn up in your office by Mr. Catlin?

(Testimony of R. M. Cobban.)

A. I have no reason to doubt that they were. I don't know that they were.

Q. And that the money was paid into the land office by Mr. Catlin on the 6th of November, 1899?

A. I don't know as to that; it might have been.

Q. And that the final proofs were made on that day?

A. I have no recollection of that, I don't know.

Q. If there is any question about it, let it stand. I am trying to get along as fast as I can. On the same day that the final proofs were made, and the money paid into the land office, that money came from your office, and Mr. Jemison conveyed to you and received that check from you. Now, on that statement of facts, Mr. Cobban, what have you to say as to whether or not that transaction was the result of a prior agreement or not?

A. I have the same thing to say of that transaction that I have heretofore said; that very positively there was no agreement between Charles H. Jemison and myself, or any other person and myself, or any other person for me that I would purchase that land.

Q. Don't you know from the conversation that you had with these people, when they came to you, after the final proofs had been made, that they had an idea in their heads that they were to receive a hundred dollars?

By Mr. WALSH.—We object to that as not being proper cross-examination; the witness not being responsible for any idea that anybody had in his head, unless that idea arose through intercourse with this witness.

(Testimony of R. M. Cobban.)

A. I have no idea. I don't know what his ideas were.

Q. Well, was there anything said—I am speaking generally now, Mr. Cobban—wasn't there something said in your conversation with this man that you admit that you closed up, that immediately after the final proof was made, that led you to understand that they expected to receive a hundred dollars from you?

A. No, sir, there was not. These men came to me after they had proven up—came to the office, and I simply said, "Now, if you want to take so much for your claims, I will give it to you instead of making me a note and mortgage." That was the general proposition.

Q. And you had no intimations from what they said, or idea, that they expected to sell at the time they so came to you? A. No, sir.

Q. On the contrary, you thought and are prepared to swear that they came to you with the expectation of mortgaging?

A. I don't know what their expectations were. I cannot swear as to their expectations, but I simply swear as to what the agreement was, and what my understanding of the transaction throughout was.

Q. So that if—didn't you know at the time that Mr. Jemison came to you, that Albert had given him to understand about receiving this amount of money from you?

By Mr. BICKFORD.—We object to that upon the

(Testimony of R. M. Cobban.)

ground that it is not proper cross-examination, and it is irrelevant and immaterial.

A. I had no reason to think anything of that kind.

Q. And that was true in all of the cases of the men that were located by Albert, and where they were sent to you, and you had any knowledge that he had made such representations?

A. I not only had no knowledge that he had made such representations; but I had every reason to believe that he had not made such representations; because his instructions had been that he should not lead any person to believe that I would buy the land.

Q. Will you let me ask you a question? If that was so, how were you able to close up the matter at once with them, if they hadn't come prepared to do the very thing that they did do?

A. Well, as to whether they came prepared to do that very thing or not, I don't know. I made them an offer and it was accepted. What was in their minds, I don't know.

Q. It might have been in their minds to do what they did do?

A. There might have been a good many things in their mind. They might have had it in their minds to hold me up. And they might have had it in their minds to beat me out of the loan.

Q. Well, if Mr. Catlin paid this money into the land-office, it was done under instructions from you, wasn't it?

(Testimony of R. M. Cobban.)

A. I haven't the slightest doubt but what the money might have been paid into the land office by Mr. Catlin. I don't know that it was in this case, but it would be simply a business transaction on my part to see that it was used for the purposes for which it was given.

Q. You don't know of any such receipt having been given to Mr. Jemison as was done in the Wheaton case?

A. I don't know. Mr. Jemison was better known to me than Mr Wheaton.

Q. I call your attention to the transaction had with Mr. Jemison, the father, the old gentleman, 72 years of age, Mr. Jacob F. Jemison; have you any recollection, or memorandum of that case?

A. Albert F. Jemison?

Q. No, Jacob F. Jemison.

A. No, sir, I have no memorandum of any check.

Q. Do you recall any of the facts connected with his case?

A. No, not generally. Not based upon what you might have from general dealings with these people.

Q. You have no specific personal knowledge of this particular case?

A. I know of my making the loan to him.

Q. Well, the records in the case show that he proved up in the forenoon, and sold to you in the afternoon, and that the money was paid into the land office by Mr. Catlin, and that he received $102.50; and that there was

(Testimony of R. M. Cobban.)

some haggling over three dollars I think. Do you recall any such transaction as that? A. No, sir.

Q. Well, if as a matter of fact you did—the money was so paid into the land office, and the proof was made in the forenoon, and the deed was made in the afternoon, and he cleaned up as profit $152.50, or thereabouts, what have you to say as to whether or not that transaction was the result of a prior agreement?

A. I have simply to say that there was no prior agreement between Mr. Jacob F. Jemison and myself, or any other person acting for me under my instructions, that he was to convey that land to me.

Q. And that he did so convey to you, and the whole matter was closed up so far as the loaning of the money, and the payment of it into the land office, and the issuance of the receiver's final receipt, and the deeding of the land to you and the payment by you to him, all on one day, if that was the result of an agreement of minds which was made on that day, and nothing said or done by your consent, or knowledge whatever that day, by which that was to be so brought about.

A. I had certainly given no idea that I would purchase the claims. Mr. Jemison might have known that I had purchased claims in that section of the country right along and he might have thought that he could get a certain amount for his claim when he wanted to sell. But I certainly have never given him anything of that kind to understand. There had been no agreement of any kind between us, and Mr. Jemison was ab-

(Testimony of R. M. Cobban.)

solutely free to do just what he pleased with the land, other than conveying to me for the amount that had been agreed upon on the loan, or securing it by a mortgage on the land.

Q. As a matter of fact, his son Albert had given him to understand that he could do just exactly what he did do, and get exactly what he did get, and that was with your knowledge and consent.

A. No, sir, it was not. Mr. Jemison—Albert Jemison had had his instructions long before that, to be careful and cautious not to lead any person into such a belief; and as stated in the record he had received such instructions long before the proving up of these claims.

By Mr. WALSH.—Yes, but counsel overlooks those things.

By Mr. MAYNARD.—What is that?

By Mr. WALSH.—I say you forget about those things.

Q. Now, Mr. Cobban, you say that you had figured up that these claims, these entries were worth so much, so that you could afford to pay them about a hundred dollars, or a hundred and fifty dollars instead of securing it, and so on. Then the limit of what you were willing to pay would be six hundred dollars for each one, would it not?

A. No, I won't say that there was a limit of that kind. Sometimes I paid some considerable more for claims than six hundred dollars.

(Testimony of R. M. Cobban.)

Q. Well, that is what you stated yesterday, was it not?

A. In a general way; generally that was true.

Q. That six hundred dollars would be as high as you would care to go? A. As a rule.

Q. So that you wouldn't care to give much more than a hundred dollars—ranging from a hundred dollars to a hundred and fifty dollars to the entrymen or entrywomen, as profit for his taking up the land, over and above what the payment of the loan would come to, and the necessary expenses in proving up.

By Mr. BICKFORD.—We object to that as not being proper cross-examination; because it is not the basis upon which the purchase, as testified to by the witness, was made. But on the contrary, the testimony of the witness is that he was basing the price paid for the land upon the amount of timber on the claim in each case; and he has testified a half a dozen times to that fact.

Q. Well, when you said yesterday, and you say it again this morning, that generally that was true; what do you mean by that, Mr. Cobban?

A. Well, I mean this; that these lands were taken up during the season, and a good deal of it could have been scripped for a price that would range from perhaps five hundred and seventy-five dollars to seven hundred dollars a quarter section, according to the market value of the scrip at that time, so that the market value of a claim at that time was approximately between five

(Testimony of R. M. Cobban.)

hundred and seventy-five dollars and six hundred dollars, or perhaps seven hundred dollars, for each quarter section; might go as high as that. It would depend a good deal on its location oftentimes.

Q. And that was—that accounted for the fact that these people did receive this amount of money so often?

A. Yes, sir, I suppose it would.

Q. Now, I call your attention to the four entries that were made by Mr. Bryan, Mr. Thomas Bryan's wife, Harriet Bryan, and by Lelia T. Bryan, and by Belle Bryan, and by Mr. Edgar Lehman. That would be Mr. Bryan's wife and his daughter, and his sister, and a stranger that was boarding at his house, a man working there, Mr. Lehman. Now, you heard the testimony of Mr. Bryan, did you not?

A. I did, yes, sir, I think I did.

Q. What is that? A. Yes, I think I did.

Q. The facts of that case as they appear of record were that these three women conveyed to you their lands, and that their money was paid into the land office by your representative for the purchase of the land, and that the sum of six hundred dollars was paid by you for those four claims, which was to cover one hundred dollars apiece for the four claims, and two hundred dollars for expenses. I will ask you, as a matter of fact, if you didn't pay the sum of six hundred dollars to Mr. Tom Bryan for these four claims.

A. No, sir, I did not.

Q. What I mean by that is, did you not pay the sum

(Testimony of R. M. Cobban.)

of six hundred dollars for those four claims, by reason of an agreement, which you had made with Mr. Bryan at Clearwater to that effect?

A. No, sir, I did not.

Q. Did you pay the sum of six hundred dollars?

A. I don't know just what the purchase price was.

Q. Are you prepared to say that was not the sum that you did pay?

A. No, sir, I am not prepared to say that.

Q. And that that six hundred dollars covered the profit that these four people that I have named were to receive, and two hundred dollars for the expenses in and about the proving up of these four entries.

A. There certainly was no agreement of anything of that kind. And whether it was six hundred dollars that I paid for these claims or not, I am not certain. I don't remember just the amount.

Q. Do you remember Mr. Bryan? Do you know Mr. Thomas Bryan? A. I do.

Q. Do you remember of meeting him at Mr. Griswold's house, in the spring of 1899?

A. I presume I did, yes, sir.

Q. Do you remember the fact of having a conversation with him then?

A. I had numerous conversations with Mr. Bryan.

Q. Had you had any conversation with him previous to that time relative to these lands?

A. Previous to what time?

(Testimony of R. M. Cobban.)

Q. Previous to your meeting at Mr. Griswold's house at the Clearwater in the spring of 1899, at the time he testifies to in his testimony?

A. I don't know that I ever met Mr. Bryan until I met him at Mr. —

Q. Don't you know as a matter of fact that that was the time when you were introduced to him by Mr. Griswold?

A. I don't know that I ever had any introduction to him by Mr. Griswold. I don't know that that was the time that you refer to. I met him near Clearwater several different times in the spring of 1899.

Q. Do you remember the first time that you met him up at the Clearwater?

A. Well, not particularly, no.

Q. Well, do you remember having a conversation with him relative to taking up these claims?

A. Yes, sir.

Q. Was it at the Clearwater?

A. Yes, sir, it was.

Q. Wasn't it the first time that you saw him there?

A. I am unable to say whether it was the first time or the second time, or the third time, or what time it was.

Q. Do you recollect of having any business dealings with him previous to the time he talked to you about these claims? A. No, I don't know that I do.

Q. What was the subject matter of the conversation that you had with him at these times?

(Testimony of R. M. Cobban.)

A. Mr. Bryan said that he was desirous of taking up claims, and had been for some time, and knew the location of some ground that was desirable; but that he did not have the amount of money sufficient to pay for the proving up; and he wanted to know whether or not he could arrange to borrow enough money to prove up on these claims. He spoke in a general way. He didn't make the agreement that he would borrow the money at that time, but he spoke as agent for these people, as representing them. He said they all wanted to take up lands there all together. And that they had wanted to for quite a little time, and it was only a question of having money enough to prove up, and he asked me about a loan for that purpose, and I told him that I thought I could accommodate him, and if he wanted it, that they could get it and go ahead and take up their claims, or that I could loan it to him. Later on they took up their claims, and they came to me for the amount of money necessary to prove up with.

Q. And they did convey to you?

A. They did convey to me; yes, sir.

Q. And how much did you pay Mrs. Harriet Bryan over and above what was paid to the land office for her and on account of her expenses?

A. I cannot tell you.

Q. Have you got a check? A. No, sir, I have not.

Q. You have not a check with you?

A. Yes, I have somewhere, too. I have got her check somewhere. I don't seem to have it here, but I know that I have a check to Harriet Bryan.

(Testimony of R. M. Cobban.)

Q. In your possession now?

A. I haven't it here.

Q. What is that?

A. I say I haven't it here.

Q. Do you remember of the fact of your giving her a check, and it being reported to you that she had lost her check, and you afterwards substituted another in its place?

A. I do.

Q. Do you remember what the amount of that check was? A. I do not.

Q. Have you no knowledge at all about the amount?

A. I think I can produce the check.

Q. I wish you would do so.

A. I think the amount of it was $125.00.

Q. Will you produce the check?

A. I haven't it here.

Q. Lelia T. Bryan, how much did you pay her?

A. I don't know.

Q. Did you pay her in a check?

A. I couldn't say as to that.

Q. You have no data before you by which you could ascertain that fact?

A. I haven't it here; no, sir. I have looked those checks up, but I haven't got it here.

Q. Will you look it up further? A. I will.

Q. And Belle Bryan, do you recollect how much you paid her? A. No, sir.

Q. What is that?

A. I don't recollect what I paid her.

(Testimony of R. M. Cobban.)

Q. When the time came for payment she had married Mr. Gilles? A. Yes, sir.

Q. Now, do you remember the trouble that came up in regard to Edgar Lehman? A. Yes, sir; I do.

Q. What was that trouble?

A. Mr. Lehman refused to execute a mortgage, and refused to come in, or anything of the kind, when the loan had been made. The money had been paid in accordance with the arrangement made by Mr. Bryan to borrow the money for him. Mr. Bryan had acted as agent in borrowing the money for Mr. Lehman.

Q. As he had for the three women?

A. Yes, sir. And Mr. Lehman failed to come down and see me about it, and I thought he was trying to cheat me out of the money entirely. I sent Mr. Bryan up first to see Mr. Lehman, and have him come down and straighten the matter up; and I think at the same time I made him an offer. If he wanted to deed to me that I would give him so much, through Mr. Bryan. I think I made him that offer.

Q. You think you made him that offer through Mr. Bryan?

A. But he wouldn't do anything either to secure me by a mortgage, or to sell me the land. He finally did come down, and I bought the land of him.

Q. When you sent Mr. Bryan, you sent Mr. Griswold with him, did you not? A. I did not the first time.

Q. Well, the first time was when Mr. Lehman refused to have anything to do with it, wasn't it?

(Testimony of R. M. Cobban.)

A. Yes, he refused to secure me for my money, or to deed or anything else.

Q. In other words, he was trying to hold you up?

A. He certainly was.

Q. And that was the only case in the series of an attempted hold-up, was it not?

A. As far as I remember, yes.

Q. And then, after Mr. Lehman refused to come, when you sent Mr. Bryan, then you sent for Mr. Griswold, and had them both go together?

A. I don't know that I sent for Mr. Griswold, or whether I sent Mr. Griswold up there, but I think Mr. Griswold did go up.

A. Well, you think that he went and saw him on his own motion, volunteered to go, or went because he was directed to go by you?

A. Well, I am not certain as to that. Mr. Griswold was going back and forth by Bonner, and through Bonner, and he might have been going up there to the woods; and I may have requested him to take Mr. Bryan, and I may have asked him to go and see Mr. Lehman.

Q. Well, he was working for you at the time, wasn't he?

A. Mr. Griswold was working for me part of the time.

Q. And they both went together and succeeded in bringing Lehman back? A. They did.

Q. And at that time that they brought him back you got a deed from him? A. I did.

(Testimony of R. M. Cobban.)

Q. And you gave him a check for $25.00 at the time, did you not?

A. I don't remember what I did give him. I gave him more than what I had made a deal to buy his claim for. I had sent word by Mr. Bryan to make him an offer of so much money.

Q. And that was a hundred dollars?

A. I don't remember whether it was a hundred dollars or a hundred and twenty-five dollars, or what the amount was. My impression was it was $125.00 over and above the amount of money that I had paid into the land office.

Q. Money that was paid into the land office?

A. Money that I had loaned to him.

Q. And you paid him a hundred and twenty-five dollars?

A. I won't say how much it was. I gave him some more, but I wouldn't say that it was $25.00 more. But he was paid more than my first offer to him.

Q. Did you pay Mr. Bryan any amount of money?

A. I don't think so, other than was included in the loan to these people.

Q. Well, as a matter of fact, you gave—you were to give to these people $100.00 apiece, that you know, and that Mr. Bryan understood to defray the expenses connected with the four entries for $200.00?

A. No, sir, there was no agreement of that kind.

Q. There wasn't any such talk between you and Mr. Bryan? A. No, sir.

Q. So that whatever money was paid, was paid to the

(Testimony of R. M. Cobban.)

four entrymen and entrywomen directly, and nothing paid to Mr. Bryan?

A. There might have been something paid to Mr. Bryan. I am not certain about that. There may have been something paid to Mr. Bryan in expenses connected with these cases, that was included in their loan.

Q. Well, how are you able to find out whether that was true or not?

A. Well, I don't know that I can tell.

Q. What is that?

A. I don't know that I can tell that.

Q. You don't know whether you have any data by which you can tell?

A. No, I don't know whether I have or not. I may have some checks.

Q. Well, if Mr. Lehman was paid more than you had agreed to pay, who did that come out of?

By Mr. BICKFORD.—We object to that because the witness has not stated that he paid Mr. Lehman more than he had agreed to pay him; the statement of the witness being that he paid Mr. Lehman more than he had offered Mr. Lehman through the agency of Mr. Bryan.

Q. Very well, I will accept Mr. Bickford's amendment. Bearing in mind that you offered to pay Mr. Lehman through the agency of Mr. Bryan, do I understand that that was an extra amount, that you paid more than you had expected?

A. It is more than I considered the claim—that I should pay for the claim, and I made him that offer, and

(Testimony of R. M. Cobban.)

probably would even made an offer of $50.00 more, rather than have it go into an attachment suit for the money that I had loaned him.

Q. What I am asking you is, the result of that hold-up, that you had to pay that amount more than you expected to pay.

A. No, sir, there was no such thing as agreeing to pay any more, or expecting to pay any more. The proposition was simply that I wanted Mr. Lehman to carry out his part of the agreement, and come down and secure his loan by a mortgage—carry out his part of the agreement. He offered to buy was an after consideration entirely.

Q. Well, I am asking you the question; was the result of this, that you had to pay for this holdup more than you expected to pay, or did it come out of the amount that you was to pay Mr. Bryan?

By Mr. BICKFORD.—We object to counsel all the time referring in this manner to a hold-up. No hold-up has been testified to here, and nothing that would warrant counsel in using any such term; nothing has been testified to by the witness to warrant any such expression. The witness has some right which the counsel is bound to respect; and while we have refrained from objecting to this manner of examination of the witness in this matter, we insist that the witness has some rights, and we appeal to the Court to protect the witness in this respect.

By Mr. MAYNARD.—I would say to my Brother Bick-

(Testimony of R. M. Cobban.)

ford that Mr. Cobban himself has said that it was an attempt to "hold up."

By Mr. BICKFORD.—He said it at the suggestion of counsel, because you referred to it originally as a "hold-up." He did it probably because he thought he might avoid this eternal line of questions put to him, and to accommodate you.

By Mr. MAYNARD.—I am glad Brother Bickford is of that genial frame of mind that he is willing to say things for my accommodation.

By Mr. WALSH.—The record itself will show what the witness has testified to, and it can be referred to in this connection.

By the EXAMINER.—Let the witness explain what he meant when he used the term.

By Mr. MAYNARD.—Well, that is just exactly what it was, precisely; that is what we shall claim all the way through this case, and there is no better English word that would express it.

By the EXAMINER.—Well, if that is the view counsel takes of it, let the witness explain what he meant.

By Mr. WALSH.—I want to say to your Honor that at this time I think counsel representing the United States Government, would have a perfect right perhaps in his argument to the Court, to refer to this as a "hold-up." I am not objecting to that, but I do object to his using that term here, but I do not object to making that kind of an

(Testimony of R. M. Cobban.)

argument to the Court. But as a matter of precaution—as a matter of protection to the witness, I think the word ought not to be used.

A. I wish to state what I meant in answer to this question, and that was that I recognized a "hold-up" in simply this, that the man had failed to carry out his agreement, and showed by his attitude that he intended not to carry out the agreement in coming to me, and securing the loan that he had borrowed of me. He had me practically at his mercy in that respect. It would have forced me to have gone into court and attached his claim to secure my money. Of course he might have disposed of it at any minute, and I would have been out the money I had loaned him. I referred to it as a "hold-up" in that way.

By Mr. WALSH.—I think the witness should have an opportunity now to answer the question propounded by counsel.

By Mr. MAYNARD.—Very well, the question may be repeated to the witness.

(Thereupon the question referred to was read to the witness as follows:)

Q. Well, I am asking you again, was the result of this that you had to pay for this "hold-up" more than you expected to pay, or did it come out of the amount that you was to pay Mr. Bryan?

A. I wasn't to pay Mr. Bryan any sum.

Q. Now, Mr. Cobban, is it not true, that on the morning that you say you met Mr. Bryan at the Clearwater, at

(Testimony of R. M. Cobban.)

Mr. Griswold's home, and had this conversation with him relative to the location of these four claims, that you had had that same morning, and before meeting Mr. Bryan, a conversation with your agent, Mr. Griswold, in which he told you that he could not make satisfactory arrangements with Mr. Bryan. That he had offered him for the four claims what he was offering throughout that country, by reason of the instructions that he had received from you, namely, one hundred dollars and expenses; and that Mr. Bryan wouldn't consent to make the locations for that small amount of money, and that he had turned them over to you, or was about to; and that he did on that same morning, turn him over to you, introduced him to you, and did you not then have a conversation with him which resulted in your making this proposition to Mr. Bryan, which he accepted, that was, that the four locations were to be made, and the land thereafter sold to you, on the payment of the sum of $600.00, the $200 00 to be allowed for the expenses for the three entrywomen, and the entryman, Mr. Lehman, each of which was to get one hundred dollars. And is that not true, and wasn't that carried out in every way, with the single exception that Mr. Lehman wouldn't convey to you for $100.00, but did get $125.00?

A. Well, there are so many things involved in that question but I will simply say here, that in nearly every respect it is absolutely false as put by counsel.

Q. Well, now point out the things that are false.

By Mr. WALSH.—No, no, we object to that, it is not proper cross-examination.

(Testimony of R. M. Cobban.)

Q. Well, isn't it true that you had had a conversation with Mr. Griswold that morning with regard to this matter?

A. It is probable that I may have had a talk with Mr. Griswold about Mr. Bryan wanting to locate the claim, and wanting to get a loan.

Q. Isn't it true that Mr. Griswold informed you then and there that Mr. Bryan was unwilling to take a hundred dollars each, and expenses, for the four claims?

A. It is absolutely false.

Q. Is it not true that you did afterwards, that same morning, have a conversation with Mr. Bryan in regard to the four claims?

A. I don't know whether I had a conversation with Mr. Bryan in the morning, or whether it was in the evening; or whether I saw Mr. Griswold the same day that I talked with Mr. Bryan the first time. I cannot tell you those things.

Q. I am not now asking you, Mr. Cobban, as to whether it was the forenoon, or after dinner, or after supper.

By Mr. WALSH.—But you did; you said that morning.

Q. Well, I meant on the occasion of your being there at the Clearwater; if you want to be so technical.

By the EXAMINER.—The witness has the right to have questions put to him.

(Testimony of R. M. Cobban.)

A. I think I have answered that question. If there is any question I would like to know what it is.

Q. Well, didn't you at that time and place, after this conversation with Mr. Bryan, with regard to these four claims, have this talk with Mr. Griswold?

A. I don't know that I have any talk with Mr. Griswold in regard to these four claims. I don't remember whether I had a conversation with him or not.

Q. You say you may have had?

A. Yes, but not in the manner that you have suggested.

Q. In which four claims, belonging to the four people, naming them, Mr. Bryan's wife and his sister—he may have spoken of those four people wanting to take up claims, and wanting to borrow money on them. But the question as asked is absolutely false.

Q. Didn't you have a talk with Mr. Bryan in regard to the matter?

A. I have repeated my conversation with Mr. Bryan.

Q. And wasn't the result of that conversation, that he was to make the location of these four claims, or was that after they were made?

A. No, sir.

Q. You didn't know that he was to make the claims?

A. No, sir, I didn't.

Q. You had no understanding about that?

A. No, sir. Mr. Bryan simply talked with me about that if they took up these claims, but he was uncertain

(Testimony of R. M. Cobban.)

whether or not they would take up the claims. If they did take up the claims, he wanted to know whether or not he could borrow the money to prove up on them.

Q. And you told him that he could?

A. I told him that he could if the claims would justify it.

Q. Then, as a matter of fact, he did afterwards—locations were made by them?

A. Yes, sir.

Q. And the lands represented by the four locations were conveyed to you by these different people that I have named, were they not? A. Yes, sir.

Q. And you paid them about a hundred dollars, did you not?

A. I have stated heretofore that I am unable to tell you at this time what the purchase price of these claims was exactly.

Q. Well, now, did you make an agreement with these four people, or was the agreement made with Mr. Bryan as their representative as to the amount that was to be paid?

A. I have stated heretofore that there was no agreement that they were to be paid so much for their locations.

Q. Well, did you have a talk with them, or did you have a talk with Mr. Bryan?

A. I had a conversation with Mr. Bryan as I have testified to, but not in regard to the purchase of any claims.

(Testimony of R. M. Cobban.)

Q. So that you never had any talk with him in regard to the buying of any of these claims and the amount that you were to pay him?

A. I certainly did not until after the proof was made; and then I don't think I agreed with Mr. Bryan as to the amount; I think it was with the parties themselves.

Q. So that then you are now prepared to swear that you had no conversation whatever with Mr. Bryan as to how much you were to pay his wife and daughter, and sister in law and Edgar Lehman?

A. Yes, sir, that is the point exactly.

Q. Well, then, if that was so, how did it happen that you sent for him and said, "Here, I want you to see that the promises that you have made to me as the representative, or as the agent of Mr. Lehman, are carried out."

By Mr. WALSH.—There is no testimony that he said that.

By the EXAMINER.—Well, let him answer that.

Q. How did you come to do that?

A. I don't think I ever made any statement of that kind. I did state that I asked Mr. Bryan to go up and see Mr. Lehman and have him carry out the agreement in regard to the loan. There was an agreement.

Q. You hadn't had any conversation with Mr. Lehman previous to this time?

A. I had had the conversation with Mr. Bryan, and

(Testimony of R. M. Cobban.)

Mr. Bryan was the man that I held responsible for that loan. He was acting as the agent for Mr. Lehman in securing that loan.

Q. Certainly, then you had had a conversation with Mr. Bryan?

A. I so stated that I had a conversation with Mr. Bryan in regard to those loans.

Q. And the conversation that you had had with Mr. Bryan was as the representative of Mr. Lehman, by which Mr. Bryan as the representative of Mr. Lehman had agreed to do certain things.

A. Not Mr. Bryan—Mr. Bryan had not—Mr. Bryan simply stood between Mr. Lehman and myself, to guarantee that the loan would be secured as intended. I didn't see Mr. Lehman personally about his loan.

Q. Very well, if the loan was to be given as intended, what were the terms of the loan?

A. The terms of the loan was six months' mortgage as it was in the other instances as I have stated.

Q. A six months' mortgage? A. Yes, sir.

Q. Mr. Cobban, you remember that I made a written demand upon you for the production of the original contract that was made between Mr. Griswold and yourself, in the courtroom at Butte last May.

By Mr. WALSH.—We said at that time that the demand that was made at that time was made in connection with a whole lot of demands upon this witness by counsel for the Government, and we understood and

(Testimony of R. M. Cobban.)

indicated that the counsel of the Government was of the impression that the witness was obliged to respond promptly to any demands for papers that he might make on the witness in any shape or form. And the counsel for the defendant at that time said that these papers would not be forthcoming unless the counsel for the Government took the proper course to require them to be produced; and that when that was done they would be produced.

(By Mr. MAYNARD.)

Q. Very well, do you not remember that I did just at the time and before the adjournment of this case in a stipulation that was filed, and serve upon you a written demand for the production of the agreement—the original agreement which the witness swore was in his possession or the possession of Mr. Stiff.

By Mr. WALSH.—We object to that because it is not the proper way to prove the service of the demand if any demand was served. It is not a proper way to cross-examine the witness, and we object to it for that reason.

By Mr. BICKFORD.—The statement made by counsel as to the demand which was made is not correct. The witness did not state that the contract was in the possession of Mr. Stiff.

Q. Very well, you remember of me serving a demand upon you, don't you, Mr. Cobban?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—We object to that for the reason that it is not the proper way to secure the production of the paper, or to serve the demand, and further, it is not proper cross-examination.

By Mr. BICKFORD.—The witness is not required to answer that question.

Q. Have you got that paper here, Mr. Cobban?

By Mr. BICKFORD.—You needn't answer that question, Mr. Cobban.

By the EXAMINER.—He might not have the original contract.

A. I haven't got it.

Q. You haven't got the original contract?

A. No, sir.

Q. Well, do you deny that such a written notice was served upon you?

By Mr. BICKFORD.—We object to that as not being proper cross-examination, and not the proper way to secure the production of papers.

By Mr. MAYNARD.—I will say that I did myself serve such a written demand for the production of the original agreement, and I have a copy of that in my possession which I will fill out and swear to and file, and I just simply ask that the witness has the paper here now.

I desire to say now that I demand the production of the original agreement again, which was made between

(Testimony of R. M. Cobban.)

you and Mr. Griswold, and also the full and complete items of account between yourself and Mr. Griswold, which was turned over to you at the time of the settlement of the civil suit; and also the production of the original deeds, which you have in your possession, or under your control, made by the entrymen and entrywomen named in the bill of complaint in this case on Monday next at ten o'clock for the purpose of further cross-examination of yourself in this case.

By the EXAMINER.—We will now adjourn until ten o'clock Monday morning, July 14th, at ten o'clock.

HENRY N. BLAKE,
Examiner in Chancery.

Monday, July 14th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

R. M. COBBAN recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, did you succeed in finding the Bryan checks?

A. I did not; I found the stub of Mrs. Bryan's check, but I did not find the checks.

Q. Weren't you keeping your checks at the time that you gave Mrs. Bryan her checks?

A. I usually keep my checks; I intended to keep them.

(Testimony of R. M. Cobban.)

Q. Can you give any reason why this check should be missing?

A. No, sir, I don't know. I was supposed to keep all my checks, but at the same time there have been three changes in my office in the last three years, in my business relations, and my papers have been scattered a great deal. I have also carried those papers back and forth in these hearings for a good many months; I had three big valises full of them recently. I believe I have had those checks since the hearing began, that is, the check of Mrs. Bryan, but it has been mislaid in some way and I don't know where it is. I have no reason for not producing it; I would gladly do it if I knew where it was. I have the stub here.

Q. Let me see the stub, if you please.

(Stub produced.)

Mr. MAYNARD.—I read from the stub that is handed to me by the witness: "September 4th, pay to Harriet Bryan $125.00, date blank, 1899, for deed."

Q. I notice, also, Mr. Cobban, that on that same stub there is a reference to the money that was paid to Mr. Thomas Bryan. Have you those checks?

A. No, sir, I have not.

Q. Well, those are the stubs of them, are they not?

A. The stub that is here was the loan to Mrs. Bryan of the money for her proof.

Mr. MAYNARD.—I also read from the same page of the check-book stub: "September 4th, pay to Thomas

(Testimony of R. M. Cobban.)

Bryan, $411.50. Pay to Thomas Bryan, same date, for publication, $12.00—"

Q. There are two words here that I cannot read. What is that? A. "Harriet Bryan."

Q. "For Harriet Bryan"? A. Yes, sir.

Mr. BICKFORD.—We move to strike out the part of the stub read by the gentleman relating to Thomas Bryan, because it does not appear from the bill of complaint filed in this case that Thomas Bryan ever made any land entry; for the reason that it is improper cross-examination and is also irrelevant and immaterial.

Mr. MAYNARD.—The entries on this stub appear to relate to the one transaction, and I could not read the writing at first, and I desire to read it over again so as to have it consecutively placed: "Dated September 4th, 1899, pay to Thomas Bryan, for Harriet Bryan, $411.50." On the same date, "Pay to Thomas Bryan for publication, $12.00." On the same date, "Pay to Harriet Bryan, for deed, $125.00."

Mr. BICKFORD.—With the permission of the gentleman and the Master, I would like to read this as it reads here.

The MASTER.—I want to have it correct, of course, and so does Mr. Maynard.

Mr. MAYNARD.—Certainly.

Mr. BICKFORD.—(Reading:) "No. blank, pay to Thomas Bryan $411.50, date Sept. 4, 1899, for Harriet

(Testimony of R. M. Cobban.)

Bryan." "No. blank, pay to Thomas Bryan $12.00, date Sept. 4, 1899, for publication." "No. Sept. 4, pay to Harriet Bryan $125.00, date blank 1899, for deed." And then at the bottom, under the column of figures is, "$548.50."

Mr. MAYNARD.—In lead pencil; all the rest is in ink.

Q. This $548.50 is the total of those three items, is is not, Mr. Cobban? A. Yes, sir.

Q. I show you Complainant's Exhibit No. 87, and ask you if that is the deed which you refer to in your stub? A. I think it is.

(By Mr. BICKFORD.)

Q. Is it the deed or a copy of it?

A. A copy of it, I should judge.

(By Mr. MAYNARD.)

Q. Is the consideration price named therein the true consideration?

A. No, sir, it was not.

Q. Do you know why it was written as it is?

A. No, not particularly.

Q. Was it put in as you believed, as you have previously testified, as the custom was, to put in a larger amount than was actually paid?

A. Well, I preferred to have the amounts show in that way at the time, for the reason that I expected to offer these lands for sale in the east, and while there was no intention of misleading or of making any misstatements, still oftentimes the actual consideration, if

(Testimony of R. M. Cobban.)

I am offering lands for sale, there are certain people that always want the lands just at a very low margin over what a person purchased them for, and I don't always want the consideration known.

Q. Then, it would enable you in the sale of the lands to get a higher price than otherwise, would it not?

A. No, I don't know that, but it would oftentimes save haggling over the price.

Q. And for that reason you adopted the practice of putting in a larger amount than the true consideration?

A. Well, I don't suppose that half the deeds that are executed give the true consideration, and I would rather have it show in that way.

Q. Now, was this money paid to Mrs. Bryan in person?

A. Yes, I think it was, that is, the one hundred and twenty-five dollar check; that is my recollection of it. The money for the loan, I don't remember whether that was given to her personally or whether it was handed to Mr. Bryan, but I think it more than likely that they were together at the time.

Q. I show you Complainant's Exhibit No. 89. What was the fact as to the consideration for that deed?

A. This is Lelia T. Bryan. Well, I don't remember just the consideration for the deed of which this is a copy, but it was not far from six hundred dollars.

Q. And the sum named is one thousand dollars. In Complainant's Exhibits Nos. 146 and 132, I notice that the consideration price named therein in each is six hun-

(Testimony of R. M. Cobban.)

dred dollars. That was substantially nearer the true consideration, was it not?

A. Whose deeds are those?

Q. Edgar Lehman and Belle Bryan.

A. Yes, sir, somewhere in the neighborhood of six hundred dollars.

Q. Now, in the case of Harriet Bryan, I notice that the acknowledgment of the deed was made before Mr. Smith on the 4th of September; in the case of Lelia T. Bryan it was made before Mr. Ross on the 23d of September; in the case of Mr. Lehman it was made on the 18th of September; in the case of Belle Bryan Gilles it was made on the 16th of September. Can you account for the variation in the dates of the acknowledgment and execution of the deeds?

A. Well, I think, with Mrs. Harriet Bryan, that I made a bargain with her for the purchase of her claim very shortly after she had proven up. In the case of Lehman, I think that was gone into fully in my examination the other day. In the case of Lelia T. Bryan, my recollection is that she returned to the upper Blackfoot country without coming to Missoula, and it was quite a number of days before we were able to see her and get the matter adjusted.

Q. The entry in the case of Harriet Bryan, the wife of Tom Bryan, was in the Missoula land office, was it not?

A. I am not certain; I did not notice the deed in that particular; I think it was; that is my recollection.

(Testimony of R. M. Cobban.)

Q. Examine the deed and see if you can tell as to that fact from the description of the land.

A. I am not quite certain whether I can, even from that.

Mr. BICKFORD.—The record shows it.

Mr. MAYNARD.—Very well. We will spend no time on that if that is conceded.

Q. And in the case of the three others, the entries were made in the Helena District, were they not?

A. Yes, sir.

Q. Now, do you remember who went with these three parties from Missoula to Helena at the time that the final proofs were made?

A. No, sir, I do not.

Q. Is it not a fact that Major Catlin went with them and had the money in his possession, which he had received from you, for the purpose of paying the money into the land office for the purchase of these three claims?

A. I have no reason to doubt but what that may have been the case, and yet I am not certain. If he did, it was under the arrangements made with them, that we would pay the money in for their benefit on their loans.

Q. Do you remember of the fact of such an arrangement having been made?

A. It was a very customary arrangement that we would pay the money into the land office under such an arrangement, and especially where there were women

(Testimony of R. M. Cobban.)

concerned, because they knew nothing about the routine, and we felt safer in having the money paid in in charge of some one that was responsible, rather than to have it in charge of a woman like that; they are liable to lose it and not know how to proceed in the matter. It was understood that we were to assist these people in their loans in every way possible; that was one consideration of the loan, that we were to assist them in every way we could, and if Mr. Catlin went there it was with that express thing in mind, to give them what assistance he could.

Q. That is what he went for?

A. I presume so.

Q. Now, if that is true that Mr. Catlin went with these three people and paid the money into the land office, is it not also true that he paid their railroad expenses from Missoula to Helena and return?

A. Well, I could not say as to that. If the loan was negotiated including such expenses, it might have been. The loan in a great many instances was sufficient to pay what money they needed in perfecting their title to their land.

Q. Then it is true furthermore that he may have paid their hotel bills in the city?

A. Well, I could not say as to that. If they had asked him to look after their expenses for them, he may have done that. If he did, the statement was certainly rendered to them of the expenses, the same as of any other money that was paid out for their benefit.

(Testimony of R. M. Cobban.)

Q. And on your return to Missoula, they conveyed the land named in these certified copies to you?

Mr. BICKFORD.—You have that in the deeds.

A. As to that, the conveyance shows that they did not convey at once, that there was some time elapsed—different times elapsed before the conveyance.

Q. Yes, as represented by the deeds.

A. Yes, sir.

Q. Now, then, with these questions that have now been put to you and answered, are you able to refresh your recollection as to the amount that was paid for these three deeds over and above the amount that was paid over into the land office by Major Catlin and the expenses.

A. Well, I certainly couldn't tell you.

Q. You say from your stub that one hundred and twenty-five dollars was paid to Mr. Bryan?

A. Yes, sir.

Q. Have you any reason to believe that the amount in the case of the other two women was any larger?

A. No, I don't know that it was; I think very likely it may have been the same.

Q. Don't you think it was the same?

A. I don't know.

Q. You have no recollection on the subject?

A. No, sir, only in a general way that it was somewhere in that neighborhood; just what the consideration was I am unable to say.

Q. And the same would be true in the case of Edgar

(Testimony of R. M. Cobban.)

Lehman, except the twenty-five dollars, the extra amount that was paid, as you testified the other day?

A. Well, I think that I testified the other day that I did not know the amount that was paid to Mr. Lehman, and I certainly do not.

Q. Isn't it true that it was, in your best knowledge, substantially the same as that which was paid to the three women?

A. My recollection is that Mr. Lehman received something like one hundred and fifty dollars besides the amount of money that was borrowed.

Q. Now, were there any negotiations had between yourself and these three women prior to their conveying the land to you? A. Yes, sir.

Q. Were there any had before they returned to Missoula from Helena, after they had made their final proofs?

A. Not as to any purchase of their lands.

Q. Had you had any talk with them at all in regard to the matter, or was it all done through their representative, Mr. Thomas B. Bryan?

A. I think that I had some talk both with Lelia T. Bryan and with Belle Gilles, but I am not quite certain. Miss Lelia T. Bryan, I know, was in the office before coming to Helena, and there arranged with me or with Major Catlin the details of the loan.

Q. Now, isn't it true, Mr. Cobban, that this transaction which we have now in a general way covered by these four entries was entirely the result of the conver-

(Testimony of R. M. Cobban.)

sation and the agreement which you made and entered into with Mr. Thomas B. Bryan up at Clearwater, by which you agreed to pay him the amount that you did in fact pay these four people for the conveyances that are named in these exhibits?

Mr. BICKFORD.—We object to this for the reason that it is not proper cross-examination, for the further reason that the question does not express an idea, and for the reason that it is intended to be and is misleading.

Q. (Continued.) —with the single exception of the extra amount that you may have paid to Lehman by reason of his refusing to carry out the agreement which had been made for him by Mr. Bryan?

Mr. BICKFORD.—Now, we demand that the question be separated so that it may be intelligible to the witness.

The MASTER.—The witness may answer in his own way.

Mr. BICKFORD.—I want to submit to your Honor, how can a witness answer a question which starts out with the proposition that he agreed to pay Mr. Bryan money and then says that he afterwards paid money to these people under an agreement that he was to pay money to Bryan?

A. It is not true that there was any agreement with Mr. Bryan and myself concerning these claims, and it is not true that I purchased those claims or that those

(Testimony of R. M. Cobban.)

deeds were given in pursuance of any agreement made beforehand that those people should convey to me.

Q. Well, how was it then, not going into the details of the case which appear of record—but how was it that, if this agreement had not been made a distinct agreement that they were to convey to you as soon as may be after final proof—how was it that we find Major Catlin taking these people to Helena and paying their expenses there and back?

Mr. BICKFORD.—The testimony is not that he paid their expenses there and back; this witness, at least, has not testified to that fact, and if the record discloses it I do not now remember the fact of its so disclosing it. It is an assumption on the part of counsel.

Mr. MAYNARD.—Do you care to have me stop to point out the page of the record where Major Catlin testified that he paid their expenses?

Mr. BICKFORD.—I do not. I say it is an assumption on your part that the testimony so shows, and I say that this witness has not so testified.

A. If Major Catlin did pay their expenses there, it was certainly in pursuance of an agreement with those people as to their loan, that it was included in their loan and was a part of their loan. I have no means of knowing, though, that he did pay their expenses. After their proving up they certainly had to come to me to carry out their agreement with reference to securing the loan.

(Testimony of R. M. Cobban.)

Q. I will refresh your recollection by reading from the record, Mr. Cobban. I show you the testimony of Major Catlin on page 4615, which was taken and sworn to before the Examiner:

"Q. Who did you pay this money to for these four entries—three anyway and possibly four?

A. I really do not recollect whether I paid it to the parties themselves or whether I paid it to the receiver of the land office; I paid it in surely.

Q. You paid it into the land office?

A. Yes, sir.

Q. And got the money from Mr. Cobban just before you left for Helena? A. I did, sir.

Q. Have you any recollection as to the amount of the expenses you paid in the transportation of these people to Helena and back?

A. Oh, I have some idea of it; I could not say exactly.

Q. Well, how much have you an idea that it is?

A. The round-trip ticket from Missoula to Helena would be about eight dollars at that time.

Q. Where did you put them up; at what hotel?

A. They went to the Cosmopolitan Hotel, a dollar a day house, or a dollar twenty-five a day, I don't know which.

Q. And you paid their bills at the hotel, did you not?

A. No, sir, they paid their own bills.

Q. You are sure of that? A. I am.

Q. Did you give them the money? A. I did.

(Testimony of R. M. Cobban.)

Q. How much did you give them for that purpose?

A. I gave them whatever the amount was of the bill."

Now, Mr. Cobban, if there was no such agreement as I have already called your attention to, how do you account for the fact of Mr. Catlin, in this record which I have now read to you, swearing that he paid for their transportation and their hotel bills?

Mr. BICKFORD.—We take issue with the gentleman upon the other side in his statement of the evidence that Mr. Catlin swears that he paid their transportation.

Mr. MAYNARD.—Very well; this is a question of fact.

Mr. BICKFORD.—Certainly, and we object to the question because it is based on a false hypothesis.

A. Why, I don't see that it needs very much explanation. I have already stated that those people borrowed the money for their proving up on their lands, including their necessary expenses, and it was a part of their loan as much as the money that was paid for the land. I don't remember just what sums were paid out for each one, but whatever it was, it was a part of the loan to them.

Q. Now, you don't claim that there had been a specific agreement made with these different people separately that they were to mortgage to you; in other words, that you had had separate dealings with Lelia

(Testimony of R. M. Cobban.)

T. Bryan and with Harriet Bryan and with Mrs. Gilles and Lehman, prior to this time, do you?

A. While not personally with each one of them, the very fact that Mr. Bryan was acting as their agent in the matter in securing the loan, and had so stated to me, that they wanted the loan. I think in the case of Lelia T. Bryan that I had a talk with her myself, and yet I would not say positively. In the other cases it was thoroughly understood that it was a loan from beginning to end.

Q. Understood with whom?

A. With myself, and they so understood it.

Q. If it had not been made, if Mr. Bryan was not working for them and acting for them, do you wish to be understood, when you say they, that you refer to Mr. Bryan himself as their agent?

A. I refer to the people themselves.

Q. Now, I will ask you again did you have a specific agreement with the people themselves or with Mr. Bryan, individually or not?

A. I had it with the people themselves, through Mr. Bryan, but it was certainly thoroughly understood between them and myself just what the consideration of that loan was and how it was to be—

Q. Then, if you had the agreement with the people—

Mr. BICKFORD.—Let the witness finish.

A. — how it was to be secured and all about it.

Q. Then, if you had the agreement with the people

(Testimony of R. M. Cobban.)

themselves, through Mr. Bryan, you refer to the agreement which you had made with Mr. Bryan in their behalf?

A. I think I gave that evidence quite clearly a few minutes ago, as to the conversation between Mr. Bryan and myself.

Q. Do I understand you to swear that the specific agreement which you made with Mr. Bryan was that these people were to mortgage to you, and that in the mortgage there was to be embraced all of the expenses of making the entries at Helena, and Major Catlin's expenses in addition to all the other necessary expenses of the entries?

A. The talk with Mr. Bryan was that I would loan those people whatever was required for the necessary expenses. It was not gone into in detail just what those expenses would be, but whatever they were on their behalf was to be secured by a mortgage.

Q. Have you named now all the elements which entered into the mortgage that was to be executed in your behalf?

A. All of the money that was paid for their expenses, yes, sir, all of it.

Q. Traveling expenses and publication fees and so on? A. Certainly, that would be included.

Q. Very well. Now, if you have named them all in those cases where it appears that you had some extra expenses in Mr. Catlin's taking them and his time and

(Testimony of R. M. Cobban.)

all that kind of business, weren't you going to charge them one hundred dollars apiece for locating them?

A. No, sir.

Q. Why not?

A. Well, I don't think there was an agreement for one hundred dollars. I do think that there was some consideration there, but I don't remember what it was.

Q. Now, name the reason, if any existed, why you should not charge them one hundred dollars for doing all of this work, when you would charge others one hundred dollars for doing the same work or less?

A. Well, those people had found their own claims, and I don't remember just the consideration that there was in that, but there was some consideration that was to be added in there, I think, in that mortgage, but it was not one hundred dollars, I know that.

Q. But you don't know what the additional amount was that was to be added?

A. No, sir, and I am not certain at this time that there was any additional amount, but I think that there was.

Q. How long were these mortgages to run?

A. I think the same length of time that was customary, six months.

Q. Why do you name six months? Who established the custom of six months?

A. Why, it was a proposition—I did not want to

(Testimony of R. M. Cobban.)

make a long time loan, and the talk was that it would give them time to make a turn otherwise.

Q. Now, I ask you again, if this is true that you have now testified to in regard to this agreement as to the mortgage, how it happened that so soon, as the records show, these different Bryans conveyed to you?

Mr. WALSH.—That question has been answered; I don't think it ought to be asked again. Never mind answering it, Mr. Cobban.

The EXAMINER.—Read the question.

(Question read.)

Q. Now, when I say, I ask you again—I haven't asked you this question in regard to these cases. What I meant by that was that I have asked you the same question in regard to these other entries.

Mr. WALSH.—Yes, sir, the question was asked and answered here within five minutes, right on this record here. You asked him to explain how it was, in view of these things that have been detailed to him, these people conveyed their claims to him, immediately after, and Mr. Cobban explained that they did not immediately convey.

Mr. MAYNARD.—Yes, and then I brought in some additional facts.

Mr. WALSH.—The only additional fact that you have brought in is that they agreed to give the mortgage.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—And I asked, in view of the fact that they agreed to give a mortgage, how it was that they deeded?

A. It resulted from the fact of my making them an offer thereafter to purchase their land, after they had a right to sell, and I presume that they considered that the price that I offered them was a fair consideration for the land, and that instead of giving the mortgage they would make the deed, and they did so.

Q. It is true in these cases, as in the others that I have called your attention to already, that you had in mind all the time the purchase of these lands, is it not?

Mr. WALSH.—That is objected to as not proper cross-examination and as immaterial and irrelevant.

Mr. MAYNARD.—Why?

Mr. WALSH.—Because he is absolutely permitted under the law to have in mind the purchase of just as many of these claims as he may care to.

A. Not particularly, no, sir, no more than—

Q. All the rest of them—

A. —that I might be in the market for the purchase of timber at any time, and if those claims were offered for sale after the people had a right to sell them, I might be in the market. I did not know whether I would be in the market or not, but if I was—

Q. You knew that you were in the market for the buying of these lands at the time when you sent Major Catlin to Helena with these people, did you not?

(Testimony of R. M. Cobban.)

A. Yes, sir.

Q. You had it in mind then that you would try and buy these lands?

A. Well, I may have thought that when the time came and they had the right to sell I would make them an offer.

Q. Hadn't you fully made up your mind that you would make them an offer?

A. I cannot say as to that.

Q. And that the offer that you would make would be the same offer that you had made to Mr. Bryan in their behalf, and which he had accepted?

Mr. BICKFORD.—We object to this because it is getting entirely out of the limits.

Mr. WALSH.—He has denied several times that he made any such offer; you have got that down a dozen times, and I don't see why you should repeat this thing. I object to this as absolutely not proper cross-examination.

Mr. MAYNARD.—If I could conduct this cross-examination to please you, gentlemen, I would, but unfortunately I cannot.

Mr. WALSH.—We ask you to conduct it not to please us, but to please the Court, in accordance with what the Court would demand.

Mr. MAYNARD.—After I have been engaged in this business for thirty years, I don't think I would be sent

(Testimony of R. M. Cobban.)

out here by the Government to be taught by you gentlemen.

The MASTER.—Read the question to the witness.

Mr. BICKFORD.—We want to have it put on record, if your Honor please, our objection to the question, that it is not proper cross-examination, and that the question contains a statement of fact which has been repeatedly disputed by the witness, that is to say, that an offer had been made to Mr. Bryan at any time.

Mr. WALSH.—Not only disputed by the witness, but there is absolutely no testimony in the record to show that such an agreement had been entered into by anybody; it has not been testified to by any witness.

Mr. MAYNARD.—I say in answer to that, that the testimony of Mr. Bryan which he gave before Mr. Zevely, an officer of the United States, and which he gave before the Grand Jury, and which is in this record, shows positively that there was a specific agreement made between those men, that for the sum of six hundred dollars, which was to cover one hundred dollars for each of the four and two hundred dollars for expenses, these lands were to be conveyed to Mr. Cobban, as they were conveyed.

Mr. WALSH.—We say in answer to that that we are trying this case not on any evidence given by Mr. Bryan before any Grand Jury or before Mr. Zevely, but on the testimony given here.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—I say in addition: As corroborated by Mr. Bryan in his testimony given in this case.

The MASTER.—Well, I will let the witness answer.

A. Well, I have stated several times that there positively was no agreement between Mr. Bryan and myself that I would purchase those claims or that they would be sold to me, and that the purchase was not made in pursuance of any agreement previously made.

Q. I now show you Complainant's Exhibits Nos. 114 and 116, being the deeds of Hyram and Matilda Dodd and Harrison and Lizzie Dodd to you. Do you know what the true consideration in those deeds?

A. Well, the consideration as named in the deeds is two thousand dollars each; I think the actual consideration was in the neighborhood of twelve hundred or thirteen hundred dollars.

Q. That is, that twelve or thirteen hundred dollars would pay for the two descriptions contained in each of the deeds? A. Yes, sir.

Q. That would be about a thousand dollars for paying for the two descriptions and the expenses—

Mr. BICKFORD.—That is manifestly a statement of counsel which is contrary to the answer of the witness given a moment ago, the question now propounded to the witness being purely a mathematical proposition, that one thousand dollars is not twelve or thirteen hundred dollars.

(Testimony of R. M. Cobban.)

Q. Well, I mean that one thousand dollars would be the amount that would pay for the two descriptions and the necessary expenses, assuming that they were the full one hundred and sixty acres.

A. I think the consideration on those instances was the amount of money that had been loaned to those people and the amount that they owed me for my work and assistance in the matter and about one hundred and twenty-five dollars apiece in addition to that.

Q. Now, I desire to have you distinctly carry in mind the fact that I am not asking you in regard to the entries of Harrison Dodd and Lizzie Dodd and Hiram Dodd and Matilda Dodd. Had you had any conversation with these parties previous to their conveying to you?

A. Yes, sir, I had.

Q. Where? A. In Missoula.

Q. When?

A. Well, I had numerous conversations with Harrison Dodd, and I think I had some with Hyram Dodd.

Q. Well, what was the conversation that you had with Harrison?

A. Well, he negotiated the loan with me for his own and his wife's claim, the money that they wanted to use for the proving up of their claims, and I agreed to furnish them the money and to charge them in each instance one hundred dollars additional for my services.

Q. You have a distinct recollection in this case of Harrison Dodd? A. I have.

(Testimony of R. M. Cobban.)

Q. What facts or circumstances are there that enable you to do so?

A. Well, I remember very distinctly that I loaned Mr. Harrison Dodd the money for his expenses in the first place, when the loan was negotiated, and I remember quite distinctly that he gave me a receipt for it.

Q. How much did you loan him?

A. I think I loaned him fifty dollars.

Q. What was that for?

A. I think that that was for expense money in making his entries.

Q. Making his entry and his wife's?

A. Yes, sir.

Q. And he gave you a receipt for that?

A. Yes, sir.

Q. Was that before the filing?

A. Yes, I think it was.

Q. Well, what arrangements did you make, if any, as to when he was to pay it back?

A. I made the arrangement that he was to give me a mortgage on his timber and stone claim as soon as he could do so under the law, as soon as he had title so that he could do so.

Q. And what was true in his case was true in his wife's?

A. Yes, sir; that is, I had no talk with his wife.

Q. At any time?

A. Well, I won't say that; I may have had some talk

(Testimony of R. M. Cobban.)

with her, but I have no recollection of talking with her personally, though I think she was in the office at times with her husband when those things were discussed.

Q. Let me understand you. At the time that he came and you paid him fifty dollars to pay the expenses of himself and wife to go over to Helena to file, as I understand you, it was all talked over between you at that time, and a specific agreement made that you were to take charge of the matter from that time on, and attend to all of the necessary expense and do all the work, and when they got in a condition to do so, that is, immediately after the final proof, the issuing of the receiver's final duplicate receipt, that then they were to execute a mortgage to you for the amount that you had paid out in their behalf, and added thereto the sum of one hundred dollars as compensation for your trouble? A. Yes, that was it exactly.

Q. Would the one hundred dollars pay for locating Harrison and his wife, or would it be two hundred dollars?

A. It was one hundred dollars in each instance, in addition to the expenses.

Q. So that it would be two hundred dollars actually that would be incorporated in the mortgage over and above the actual cash disbursements? A. Yes, sir.

Q. And was that agreement carried out?

A. It was carried out to a certain extent. The mortgage was never executed, because after he had a right to sell, when he came to close the matter up, I made him an

(Testimony of R. M. Cobban.)

offer for the purchase of his claims and instead of executing the mortgage he concluded he would sell to me.

Q. Where did you make that offer?

A. I am not sure whether that offer was made in Helena or whether it was made in Missoula.

Q. You are not sure of that? A. No, sir.

Q. Well, if it was made in Helena, who made the offer, if you know; did you make it?

A. I either made it or directed it to be made.

Q. Well, if you directed it to be made, to whom was that direction given?

A. I am not clear; I cannot say for certain about that.

Q. And you don't know where the offer was made?

A. Why, I have an indistinct recollection that it was made in Helena, and yet I am not certain that it was so.

Q. Now, take the case of— You have just been talking about Hyram Dodd, have you not?

A. Harrison Dodd.

Q. Harrison, very well. Take the case of Hyram Dodd. Is your recollection as clear and distinct as to the dealings with Hyram as it was with Harrison?

A. Yes, sir.

Q. Was the same agreement made with him?

A. Practically, yes, sir.

Q. Do you remember having the same talk with him in Missoula? A. Yes, sir.

Q. Did you loan him fifty dollars, too?

A. No, I don't think I did; I think I loaned him a

(Testimony of R. M. Cobban.)

smaller sum at that time, but I am not quite certain as to the amount.

Q. If you are not quite certain as to the amount, what circumstance or fact is in your mind which induces you to-day that you loaned him any amount at all?

A. Well, I know I did, and I think I have his receipt for it, showing the amount.

Q. You think you have? A. I think so.

Q. Where is that?

A. Among my papers somewhere, I think.

Q. I wish you would produce it.

A. I will try and look it up.

Q. If you have got a single receipt of any kind, or note of any kind, or anything that you would call a note that was ever given you by any one of the entrymen or entrywomen that are named in this bill of complaint—if you have got it in your possession, or you can get it, I would like to have?

Mr. WALSH.—We want to say with reference to this wholesale demand, the same as we did the other day, that we do not recognize any obligation on the part of Mr. Cobban to produce all his papers here, generally speaking, at the request of counsel.

Q. But you are quite certain that you loaned him some small sum?

A. Yes, sir, I think I loaned him—well, I don't remember the sum.

Q. But you do remember clearly that you had as dis-

(Testimony of R. M. Cobban.)

tinct an understanding with him as you did in the case of Harrison Dodd that the mortgage should be executed and delivered to you? A. Yes, sir.

Q. And was one hundred dollars more to be added in that case? A. Yes, sir.

Q. Do you remember having any talk or conversation with him in regard to that afterwards, after the money was paid into the land office and they were ready to do business with you?

A. Well, I don't remember the details of the purchase, other than this, that after his proof was made I know an offer was made to him when the time came to secure the loan by a mortgage. Then, and not till then was there any offer or any proposition made to purchase his claim. Then an offer was made that I would give so much for his land, and it was accepted.

Q. Now, is it not true that in these four cases, the cases of Hyram and Harrison Dodd and their respective wives, that no part of the agreement which you have now sworn to that was made between you, was carried out? A. Why, certainly—

Q. As far as anything connected with the mortgage was concerned?

A. The loan was made in accordance with the agreement absolutely.

Q. Isn't it true that no mortgages were executed?

A. It is true.

Q. And isn't it true that no money was paid by you

(Testimony of R. M. Cobban.)

to them except as it was delivered to them by Major Catlin? A. No, sir, it is not true.

Q. Did you pay it to them?

A. Yes, sir, there was some money paid to them.

Q. I mean for the purchase of the land?

A. I am not certain as to how the final purchase price of the land was paid to them, but it was paid by me or paid by Major Catlin, and if it was paid by Major Catlin it was paid under my instructions.

Q. Do you remember of his going to Helena with them?

A. Yes, I think I do. I am not certain whether I was in Helena myself at that time.

Q. What is your best recollection as to the fact as to whether you were here or not?

A. I think not; I think Major Catlin came to Helena.

Q. Do you recall any other fact or circumstance connected with Major Catlin's coming here with them, as to why he came or what he was to do?

A. I remember distinctly that Hyram Dodd had been drinking that morning and it would have been a very unsafe proposition to have given him the money to pay into the land office; I remember that very clearly.

Q. Was that the reason that Major Catlin was sent here to Helena with the money?

A. That was one of the reasons, to see that the money was used expressly for the purpose for which it was borrowed, and to give them any assistance that he

(Testimony of R. M. Cobban.)

could in the land office. These people knew nothing about what to do, and it was necessary—they would have had to call on somebody for assistance, some attorney.

Q. Had Harrison Dodd been drinking?

A. Harrison Dodd had been, yes, sir.

Q. Had Hyram, too? A. I don't say Hyram.

Q. Had Hyram? A. I don't know.

Q. It is true in this case that Major Catlin did go with them, and did pay all of their expenses coming from Missoula here, is it not?

A. I don't know whether he paid all of their expenses or not, but if he did, it was a part of the loan as arranged for by them beforehand.

Q. Was it arranged beforehand that when they came here to make their payments in the land office, their necessary traveling expenses were to be paid, too?

A. Whatever amount they required or needed for actual expenses in connection with these—whatever they lacked, yes, sir, it would be loaned to them.

Q. It was talked over to you then a long while previous to the time of the making of the final proof—sixty days necessarily elapsing between the time of filing and the final proofs—that they would not have money enough to come from Missoula here, to pay their railroad expenses and fare, and that was to be incorporated in the mortgage?

A. No, sir, not exactly in that way. They arranged for the necessary money, what money they would re-

(Testimony of R. M. Cobban.)

quire at that time—what they lacked. Whether I did pay their railroad fare or not I am unable to say, but if it was paid, it was a part of their loan as arranged for by them.

Q. How do you account for the fact that, if this was all to be done and this was all to be secured in these mortgages that you have talked about, that Major Catlin did pay their expenses and did pay the purchase price of the land into the land office and did get the receiver's final receipt, and thereupon on that very same day, namely, on the 19th day of October, 1899, he did take these people to notaries public in this city and have them execute these deeds that are in evidence in this case?

Mr. WALSH.—There is not anything called for at all in that question. We object to it as immaterial and irrelevant and not proper cross-examination, and the witness is not asked anything at all.

Mr. MAYNARD.—All right. Read the question.

Mr. WALSH.—He has told how it came up that Major Catlin paid this money into the land office.

Mr. MAYNARD.—Don't testify, Brother Walsh.

Mr. WALSH.—I say that he has testified to these facts.

Mr. MAYNARD.—If that question is not satisfactory to my brother, Walsh, I will withdraw the question.

Q. I will ask you, if the agreement had been made

(Testimony of R. M. Cobban.)

to mortgage, how it happened that on the day they proved up they conveyed to you under the conditions that were named in the last question?

A. I presume, and I am quite certain, that Major Catlin had instructions to take mortgages from them after they had proven up, but he further had instructions that if those people wanted to take so much for their claims after they had proven up, he should make them an offer, and if they accepted, that would be paid to them on their deeding instead of their giving the mortgage; that was the reason.

Q. Well, that was what you wanted them to do, wasn't it—you wanted the deed rather than the mortgage?

Mr. WALSH.—Objected to as immaterial and irrelevant and not proper cross-examination.

A. What I wanted had nothing to do with the case. There simply was an agreement that they should secure this loan by a mortgage, but the instructions to Major Catlin were that if they preferred, when they had a perfect right to do so, to deed to me, that they could do so and I would pay them so much money or he could pay them so much money instead of taking the mortgage.

Q. In truth and in fact was not the agreement which you had made that, instead of their mortgaging and the different items which you have stated being embraced in the mortgage and that hundred dollars in

(Testimony of R. M. Cobban.)

each case for your services—instead of that being the agreement, wasn't this the agreement which you made, that after they had proven up and the receiver's receipt had issued, that immediately thereafter or as soon as may be all of the items of expense which you had paid out were to be figured up, and that in addition to that and over and above that, one hundred dollars was to be given to them by you for their conveyance; wasn't that the agreement?

A. No, sir, it certainly was not.

Q. If that was not so, how do you account for the fact that immediately after the receipts did issue Major Catlin did take these people to the Cosmopolitan Hotel in this city and did figure up the various items of expense and did show them what the amount was and then did thereafter pay them each one hundred dollars?

Mr. WALSH.—Who testified that he took them to the Cosmopolitan Hotel?

Mr. MAYNARD.—Mr. Catlin.

Mr. WALSH.—Are you sure about that?

Mr. MAYNARD.—Let me read that, so there may be no misunderstanding in the matter.

Mr. WALSH.—Yes, do so.

Mr. MAYNARD.—I am not guessing at this business; that is not the way I do business. I read from the record, page 4625:

(Testimony of R. M. Cobban.)

"Q. After you had paid all of their expenses, as you have testified, and paid Mr. Cobban's money in for them to buy their land, that then on that same day they were taken by you over to Lincoln Working's office in the city of Helena and that each of them conveyed this same land to Mr. Cobban? A. This money was a loan from Mr. Cobban to these parties, and it was not Mr. Cobban's money in any sense of the word. Q. But they straightway went with you, as you have testified, from the land office to Mr. Lincoln Working's office, and there they conveyed this land to Mr. Cobban? A. No, sir. Q. Did you not say that they went with you to Lincoln Working's office? A. I did, but I did not say that they immediately went there. I said that I went to the Cosmopolitan Hotel with them, and there I made the arrangement and purchased the land in the hotel. I spent two hours with them there. Q. You went from the land office to the hotel? A. Yes, sir. Q. And then from the hotel you went to Working's office where the deed were drawn up? A. After I had come to an understanding with them I went out to see where I could find a notary public to draw up these papers. Q. And you received the deeds from them? A. I did. Q. And you paid them, each of them, one hundred dollars for it, did you not? A. I cannot say as to whether, you know, they had any part of this money as a loan from Mr. Cobban before we started out or not. If they had, I had something to show for it, a memorandum of

(Testimony of R. M. Cobban.)

it. I know that after the proofs were made I went into the hotel with them, or after they had gone there I went there, and there I made out the account of it to each one, the amount that he had received, and if he had received anything prior to that time from Mr. Cobban I don't recollect that, but if they had I also had that charged up to them in my account. Q. What were the items that were embraced in your charge? A. I have already stated that there was a round trip ticket to Helena and car fare and, I think, hotel bills. Q. How about the land office fees? A. It was all included. Q. And the publication of notices? A. Yes, sir. Q. And the two dollars and a half per acre? A. Yes, sir. Q. How much did that amount to in each case, as near as you can recollect? A. Oh, I would say six or seven hundred dollars in each case."

Mr. BICKFORD.—Where do you find the statement that you made to the witness, that Mr. Catlin took these people to the hotel?

Mr. MAYNARD.—I have read it two or three times here.

Mr. WALSH.—Counsel is going to withdraw that; he is going to admit that he was mistaken about it.

Mr. MAYNARD.—He says: "I know that after the proofs were made I went into the hotel with them."

Mr. BICKFORD.—Is that equivalent to saying that he took them to the hotel?

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—Certainly it is, absolutely, that he took them there for the express purpose of doing what he did do, of making the computation and figuring up the accounts of what he had spent and the whole matter, and then going to the attorney's office and paid them the one hundred dollars over and above what he had paid out for them.

The EXAMINER.—Well, I think the Court above will understand the objections and the answers. Now, read that question to the witness and let him answer it.

Mr. WALSH.—Counsel means to ask how does the witness account for the fact that these gentlemen took Major Catlin to the hotel.

A. Well, I think the evidence as read clearly corroborates what I said; that otherwise, if there was to be simply one hundred dollars paid them, what need was there of figuring any expenses, and why should it be done? They had no interest in the expenses, if there was a straight agreement to pay them one hundred dollars, but it was absolutely in conformity with the agreement that those expenses should be figured up, and that thereafter the mortgage should be given.

Q. Well, that is a good suggestion to your counsel, that they can make in the argument of your case in the various courts of the United States—

The MASTER.—Put questions to the witness.

Q. That was your answer to my question, was it?

(Testimony of R. M. Cobban.)

A. Yes, sir.

Q. How do you account for the fact, if there had been no prior agreement made that they were to receive as their individual profit the sum of one hundred dollars—I say, if such a prior agreement had not been made between you—that they did receive that identical sum, and it was paid them by Mr. Catlin in your behalf.

A. Because that was the amount of money, over and above the money that was due me, that I had instructed Mr. Catlin to offer to these people, and it was the amount that he did offer to them and it was the amount that they accepted.

Q. But there had nothing been said to your knowledge, either by you or by Mr. Catlin through your instructions or by any of your representatives, that they were to receive this amount? A. No, sir.

Q. Immediately after they were in a condition to convey to you?

A. No, sir, there had not.

Q. Now, as a matter of fact, these deeds were brought with Mr. Catlin, in his pocket, at the time he left Missoula, were they not?

A. I don't think so.

Q. Are you prepared to say that they were not?

A. No, sir, I don't know anything about it.

Q. You have no knowledge as to anything about that? A. No, sir, I have not.

Q. If, as a matter of fact, they were drawn up in Missoula, and all that Mr. Heath, one of the notaries,

(Testimony of R. M. Cobban.)

and Mr Lincoln Working, the other notary who did take the acknowledgment in these cases—all that they had to do was simply to take the acknowledgment and sign their names, how do you account for that?

A. Well, I don't attempt—

Q. If there was no prior agreement.

A. I don't attempt to account for it, because I don't know that such was the fact.

Q. If, as a matter of fact, they were so drawn up in Missoula, how do you account for that fact?

A. I am not trying to account for things that I know nothing about.

Q. That was done without your knowledge or consent?

A. If such was the fact, but I don't think that it was; I don't think that such was the case.

Q. You had no knowledge of that being done in any of the cases, except in the McConnell case?

A. The McConnell case was not a case where the deed was drawn prior to proving up.

Q. I mean where the deed was taken from Missoula up to his home?

A. Why, I think there were other instances where people took deeds from Missoula to their home.

Q. I mean where your notary made them in advance and took them prepared; you know of no such cases as that? A. I don't know that I do.

Q. Take the case of M. J. Doney. Don't you know,

(Testimony of R. M. Cobban.)

as a matter of fact, that in that case Wallace P. Smith went up from Missoula with the deed in his pocket?

A. Mr. Wallace P. Smith did not take a deed prepared for Mr. Doney, except one for the timber on his homestead claim.

Q. Very well, in that deed which conveyed the timber on the homestead claim, did not it also convey the timber that was taken up in the Stone and Timber Act claim? A. I think not.

Mr. BICKFORD.—The testimony shows not, and the deeds themselves show not.

Q. That was the only one that was prepared then?

A. Yes, sir.

Q. Take the case of Stewart. Don't you know of the fact of his going there with a prepared deed?

A. No, sir.

Q. You don't know that? A. No, sir.

Q. And if he did do that, that was without your knowledge or consent?

A. I don't think he did so.

Whereupon a recess was taken until 2 P. M.

Monday, July 14th, 1902, at two o'clock P. M.

The hearing was resumed pursuant to adjournment.

Thereupon the witness, R. M. COBBAN, resumed the stand for further cross-examination.

(By Mr. MAYNARD.)

Q. I now serve upon counsel for the defendant in

(Testimony of R. M. Cobban.)

open court, and in the presence of the Examiner, the following notice in writing, to wit:

"*In the Circuit Court of the United States, Ninth Circuit, District of Montana.*

UNITED STATES OF AMERICA,
vs.
WILLIAM A. CLARK.

To the Above-named Defendant and to Messrs. W. M. Bickford and T. J. Walsh, His Attorneys:

You are hereby required to produce for the inspection of the solicitors for the complainant, and for use upon the trial of this cause, and the examination of witnesses therein and particularly the cross-examination of the witness, R M. Cobban, the following papers, to wit:

The original agreement, made and executed between R. M. Cobban and Chauncey L. Griswold, a copy of which is copied into the record, and is found upon pages 86, 87 and 88, volume one, herein; also

A complete statement of the items of account between R. M. Cobban and C. L. Griswold, kept by you and now in your possession, and also

All the original deeds made by the entrymen and entrywomen named in the bill of complaint in this case, which said deeds purport to convey claims located by them under the Stone and Timber Act and transferred to you as appears by the record in this case.

(Testimony of R. M. Cobban.)

The said agreement, and the said accounts were turned over to said R. M. Cobban, upon the settlement and dismissal of the suit of C. L. Griswold vs. R. M. Cobban.

(Signed) P. C. KNOX,
Attorney General of the United States.
and FRED A. MAYNARD,
Special Asst. U. S. Atty,
Solicitors for Complainant.

Dated July 14, 1902."

Which said notice counsel for the Government then read.

By Mr. MAYNARD.—Do you admit service of that, Mr. Bickford?

By Mr. BICKFORD.—If you will present me with the original I will sign it as attorney for the defendant and admit service.

Thereupon counsel for the Government handed the said paper to Mr. Bickford, who thereupon indorsed upon the same the following:

"I hereby acknowledge receipt of the foregoing notice by copy, this fourteenth day of July, 1902. W. M. Bickford, Counsel for Deft."

By Mr. MAYNARD.—I desire also in this connection to read the following notice:

"*In the Circuit Court of the United States, Ninth Circuit, District of Montana.*

UNITED STATES OF AMERICA,
Complainant,
vs.
WILLIAM A. CLARK,
Defendant.

To R. M. Cobban:

You are hereby requested to produce for the use of the complainant upon the hearing in the above-entitled cause, before Hon. Henry N. Blake, Examiner in Chancery, the original, or a duplicate original of a certain contract, made and entered into between yourself and Chauncey L. Griswold, on or about the 22d day of May, 1899, being the same you testified to have made; and which was delivered to you, or to your attorneys in Missoula, at or about the time of the settlement of the suit of C. L. Griswold vs. R. M. Cobban; and being the same contract referred to and named in the demand set forth on page 83, of volume I, of the record in this case, and made on November 23d, 1901, and being the same contract or agreement for which oral demand was made this day; and in default thereof secondary evidence will continue to be used as the evidence of said contract, viz., Complainant's Exhibit No. A, which was offered in evidence on said November 23d, as appears on page 85 of

(Testimony of R. M. Cobban.)

said record; and that you also produce the original deed made by the entrymen and entrywomen [redacted] named in the bill of complaint.

P. C. KNOX,
Attorney General of the United States.
FRED A. MAYNARD,
Special Asst. U. S. Atty.,
Solicitor for Complainant.

Butte, Mont., May 7th, 1902.

State of Montana,
County of Lewis and Clarke. } ss.

Fred A. Maynard, being first duly sworn, makes oath and says: That he served a demand, of which the annexed is a copy, on said named R. M. Cobban, by handing the same to him in the United States courtroom, Southern Division, in the city of Butte, Mont., on the 8th day of May, 1902, or the morning of the 9th or 10th of said month. That the reason of doubt as to the exact date is that there was a clerical mistake made in notice as first served; and on its discovery an amended notice was served. And further says not.

FRED A. MAYNARD.

Subscribed and sworn to before me this 14th day of July, 1902.

[Seal] JAMES U. SANDERS,
Notary Public, Lewis and Clarke County.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Montana. United States of

(Testimony of R. M. Cobban.)

America, Complainant, vs. William A. Clark. Filed July 14th, 1902. Henry N. Blake, Examiner."

By Mr. BICKFORD.—To the latter part of the demand presented, by written demand, for the production of the original deeds, at this time, I desire to enter our protest against the introduction of the original deeds in evidence, for the reason that heretofore, and by consent of counsel, certified copies of the deeds mentioned were admitted in evidence, and are now a part of the records in the case; it being understood that this protest is made upon the ground that the defendant desires to at this time protect himself from the unnecessary and uncalled for incumbering of the records, by the filing of unnecessary documents herein; and for the further reason that it does not appear that any proper effort upon the part of counsel for the Government for the documents spoken of has been made.

By Mr. MAYNARD.—I desire to say in answer to my brother Bickford's objection that the counsel for the Government have no desire to have these original deeds for the purpose of incumbering the record, but purely for the purpose of cross-examination of the witness, that is now on the stand, Mr. Cobban. First, I desire to show, and as I claim, an inspection of certain of the deeds will show, that the deeds were prepared by Mr. Cobban, or someone in his employ, in the city of Missoula, and that those deeds were prepared in advance, and ready for execution at the time they were

(Testimony of R. M. Cobban.)

presented to the entrymen and entrywomen; and that an inspection of the original deeds would show that fact; and that it cannot be ascertained from the certified copies, because in the original deeds, it would be partially in typewriting and partly in handwriting; and it is for that purpose especially that we desire the production of certain of these deeds.

By Mr. BICKFORD.—Now, we protest that the testimony does not show that the deeds were prepared in advance as spoken of by counsel, or that they were prepared by somebody in the employ of R. M. Cobban, in the town of Missoula; and there is nothing in the record to bear out the statement of counsel; and that the same is unwarranted and unfair and not called for by the testimony in the case, and is an assumption that the deeds will show something which the testimony does not show, or tend to show; but at this time it is a wholly gratuitous effort on the part of counsel for the Government to unduly prejudice the trial of the case; and we protest against the assumption of counsel in the statement made by him, and ask that it be stricken from the record, for the reason that it is unfair and uncalled for, And we further state that until such a time as proper steps are taken for the production of the testimony, or alleged testimony called for by counsel for the Government, we shall refuse to comply with the demand made.

By Mr. MAYNARD.—(After reading the paper referred to.) I desire to have this marked as an exhibit

(Testimony of R. M. Cobban.)

in the case, if your Honor please, the demand with the affidavit of service upon Mr. Cobban personally.

By Mr. BICKFORD.—We understand, if your Honor please, that no demand has been made upon Mr. Cobban personally, as required by the statutes.

By Mr. MAYNARD.—I desire, so that there may be no misunderstanding in connection with this, that the whole paper has been read in open court.

By the EXAMINER.—I will mark the notice and affidavit read, filed; it isn't strictly an exhibit.

By Mr. MAYNARD.—I call the attention of counsel to the fact that in writing the date, the word "May" was written instead of July. The paper was sworn to this morning. I would like to have the privilege of changing the month of May to the month of July.

By the EXAMINER.—Who wrote that word "May"?

By Mr. MAYNARD.— I did. In writing out this affidavit this morning I made the mistake and wrote "May" instead of "July."

By the EXAMINER.—The proper way would be to go to the Notary and have him correct it. I understand that that may be done by the notary without objection.

By Mr. BICKFORD.—Oh, yes.

Q. I show the witness Complainant's Exhibit No. 111 (counsel hands witness paper referred to), being the conveyance of Edward Dodd and Cora Dodd, dated the

(Testimony of R. M. Cobban.)

10th of October, 1899, to R. M. Cobban for the nominal consideration of two thousand dollars. I ask you, Mr. Cobban, if that was in fact the consideration?

A. I think not.

Q. What was the consideration?

By Mr. BICKFORD.—Wait just a moment, we object to any testimony with reference to the conveyances of Edward Dodd and Cora Dodd, by the witness now upon the witness stand, for the reason that there is nothing in the bill of complaint, which either directly or indirectly charges that any conveyance was made from the witness now upon the stand to the defendant herein. And further because the testimony is irrelevant and immaterial, and not responsive to any issue in this case by reason thereof.

By Mr. MAYNARD.—Whatever clerical mistake may appear in the description of the deed, I say in answer to my brother Bickford, will be corrected on application to the court, and we hope to make it hereafter in that way.

By Mr. BICKFORD.—I desire to state that this objection is not made upon the basis of the clerical error in the bill of complaint, or in any other respect, but upon the ground stated in the objection.

Q. What was the consideration?

A. Well, I don't know just exactly what it was. Probably between eleven and thirteen hundred dollars.

(Testimony of R. M. Cobban.)

Q. Do you have any recollection on the subject, or do you just speak as a general proposition?

By Mr. BICKFORD.—This objection which has heretofore been interposed, we desire to go to all of the testimony and all of the cross-examination of the witness concerning any matter or thing connected with the deed or entry of Cora and Edward Dodd.

A. Why, I have the same recollection of the transaction but nothing—I don't remember the whole detail.

Q. Do you remember of having had any conversation with Edward Dodd or his wife, previous to their coming to you to sell the land?

A. Yes, sir, with Edward Dodd.

Q. Where?

A. Well, I don't know whether it was in my office at Missoula, or whether it was on the—up in the Blackfoot country. I saw him more than once; I saw him numerous times.

Q. Had you had a personal acquaintance with him previous to this time?

A. Well, perhaps not very much. I think I knew him before his filing. Some weeks before his filing, but not before that season.

Q. You haven't any clear recollection about it, have you?

A. No, sir, it is an indistinct recollection. I had met him before that time.

Q. Do you know where he was living?

(Testimony of R. M. Cobban.)

A. I think he was living there about six or seven miles above Bonner.

Q. Well, do you know how he happened to make a location?

A. I suppose he wanted to take advantage of his rights under this Timber and Stone Act.

Q. Did you have any conversation with him either directly or indirectly previous to his filing?

A. Yes, sir, I think I did. I won't say positively whether I did or not, but I think I did.

Q. Well, which do you mean?

A. At least I knew of his filing, and I am quite certain that I had a conversation with him in person, although I may be mistaken in that. The proposition was either presented to me by himself, or somewhere there that he wished to make a filing, and desired to make a loan for sufficient money to carry him through, and to pay for his land and his expenses. And that was granted. I thought that it was by—before he proved up I know that I saw him and talked with him. But whether it was before his entry was made or not, I cannot tell you.

Q. Do you know Marion B. Watson?

A. I do.

Q. How long an acquaintance had you had with him at this time?

A. Well, I became acquainted with this man Dodd about the same time that I did Watson, along in—I

(Testimony of R. M. Cobban.)

think I met these people along about June; that is my recollection.

Q. Who introduced to them?

A. I don't know whether I had an introduction or not.

Q. Do you think you met the whole family of Dodds and Watsons and so on, on or about 1899?

By Mr. BICKFORD.—He hasn't said so.

By Mr. MAYNARD.—He said he met those people. I don't know what he meant by that.

A. Well, yes, I think so. I drove up there quite often and I took my family once or twice to the Dodd's place.

Q. Took what?

A. I took my family once or twice, and where the family were living, for a drive. They had a fish pond and we went there to see them. I met those people at that time, and then met them at various times.

Q. Well, did Mr. Watson have any dealings with you at all? A. Yes, sir.

Q. Other than looking—selecting his land that he located?

A. I don't know whether Watson worked for me any at all, but I hardly think he did.

Q. Well, you knew of the fact that he made a demand upon Mr. Griswold for $120.00, did you not?

A. I knew there was something of that kind.

Q. For locating twelve claims for $10.00 apiece?

A. I think there was something of that kind.

(Testimony of R. M. Cobban.)

Q. That included the eight Dodds and the four Watsons? A. Is that a question?

By Mr. BICKFORD.—There is a question, and there isn't any question.

Q. I say that included the two or the eight—

A. I don't know that it did.

Q. Well, Mr. Griswold paid him about $120.00 you understood?

By Mr. BICKFORD.—Wait just a moment. We object to this as not proper cross-examination, and as being irrelevant and immaterial; and as to what the Watsons understood is not evidence in this case.

A. Yes, sir.

Q. Did he afterwards ask you to reimburse him for that?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and it is also irrelevant and immaterial, and does not prove or tend to prove any of the issues raised by the pleadings in this case.

A. Did who ask me?

Q. Mr. Griswold? A. No, sir.

Q. What is that?

A. No, sir, I don't think so.

Q. Did you, as a matter of fact?

A. Reimburse him for that?

Q. Yes. A. No, sir.

Q. Or credit him with it? A. No, sir.

(Testimony of R. M. Cobban.)

Q. That was purely work of his own?

A. Yes, sir.

Q. So—

A. I charged him with the amount of the check—Mr. Griswold gave Mr. Watson an order on me for $120.00, and I gave Mr. Watson a check for $120.00 and charged it to Mr. Griswold.

Q. And to that extent you were connected with it?

A. Well, it is very evident that I was. I could not have given that testimony without I was.

Q. And you knew what it was for, did you not?

A. I knew that it was for services that Mr. Watson claimed, that Mr. Griswold had to pay him for. And it wasn't my business to inquire into any of those things particularly. If Mr. Griswold gave me an order, and there was any money—if I was owing Mr. Griswold, why I paid the order without any hesitation.

Q. And among these eight Dodds that are embraced in the twelve, at ten dollars apiece, that got this $120.00 was Edward and Cora Dodd?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and it is also irrelevant and immaterial, and does not prove or tend to prove any of the issues raised by the pleadings in this case.

A. I told you I didn't know. I think we have that on the examination here. I don't remember though, who those parties were.

(Testimony of R. M. Cobban.)

Q. Well, isn't it true that Mr. Griswold had entire charge of locating Cora and Edward Dodd to your knowledge?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and it is also irrelevant and immaterial, and does not prove or tend to prove any of the issues raised by the pleadings in this case.

A. I don't know whether he did or not. He was to—I think he showed them their claims, or went with them on the ground.

By Mr. BICKFORD.—Do you know that, Mr. Cobban?

By Mr. COBBAN.—I do not.

By Mr. BICKFORD.—Well, why do you state it then if you don't know? Do you want the record incumbered by what you think?

By the WITNESS.—No, I do not.

Q. What was he to do, Mr. Cobban, as you were about to say?

A. He was to render them any assistance that he could.

Q. And who instructed him to do that?

A. I did.

Q. How did you come to do that?

A. In consideration of the loan that was made to these people.

Q. Well, who did you have that arrangement with?

(Testimony of R. M. Cobban.)

With Mr. Griswold, that Mr. Griswold should go on and do all that was necessary to aid them in their locations?

A. I had this arrangement with those people, yes, that any assistance that we could give them in their locations in any way was entering into the charge of the hundred dollars that I made to them for the loans and the assistance.

Q. And when you say "these people," who do you mean? A. Well, I mean the Dodd family.

Q. And the Watson family?

A. Yes, sir, the Watson family too.

Q. Well, I am particularly calling your attention now to Cora and Edward Dodd. And you say that Mr. Griswold did what he did for them by reason of your instructions?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and it is also irrelevant and immaterial to the issues in this case, the name of Edward Dodd and Cora Dodd not appearing in the complaint, and there being no allegation that the defendant in this case ever purchased any land entered by either of the persons named.

A. Well, that question is very indefinite. I don't know what Mr. Griswold might have done. Mr. Griswold may have done a good deal that he didn't have instructions to do, and I don't know about that; and the question is therefore very indefinite.

(Testimony of R. M. Cobban.)

Q. Well, did he to your knowledge, have general authority to—have some authority from you to deal with these Dodds and Watsons?

A. He did to a certain extent, yes, sir.

Q. And what was that extent?

A. Mr. Griswold came to me, or these people, I am not certain which. I think that Mr. Griswold told me that these people wanted to get locations, and some of them had picked out locations, and they wanted a loan, to prove up on and to pay their expenses in proving up; and I agreed to give that to them; and I charged those people a hundred dollars for those services, and Mr. Griswold, I think, went with them—some of them at least, and showed some of them their claims. That included the showing to them of their claims.

Q. The money loaned covered the showing to them of their claim.

A. Yes. Some of them, I think, had found their claims themselves; but he was to render such services as he could in the matter.

Q. Then the assistance that he was to render them was from the beginning to the end of the matter, and for which you were to receive from these Dodds and Watsons one hundred dollars a piece?

A. Yes, sir.

Q. Well, then, it was the talk that you had with him—the arrangement that you had with him, and not with Cora and Edward Dodd?

(Testimony of R. M. Cobban.)

A. No, sir, I don't think so. I think that I had—I think that I had talked with Edward Dodd; I don't think that I had talked with Cora Dodd personally, but I am quite certain that I had talked with Edward Dodd; had talked the matter over with him.

Q. Well, if your recollection is uncertain, as you say, how are you prepared to say that you made a distinct and definite arrangement with him in regard to the matter?

A. Well, I know that I saw Edward Dodd several times during that season, and after he had taken up his claim, and I am quite certain that I talked the details over with him. I know that there was no misunderstanding about that; that it was thoroughly understood—my position in the matter.

Q. Well, Mr. Cobban, I call your attention to the record, page 1345, and ask you to look it over with me. I read as follows: "When did you ever see Mr. Cobban to know him and have any business on this matter? A. It was, I believe—on this matter, the first time I saw anything of him was when I sold him my timber claim. Q. That was the first time you had ever seen him—Cobban, to have any dealings with him? A. That is the first time I ever had any dealings with him at all." —now is he mistaken, do you think, in his testimony?

A. I think, as I stated before, that I had seen him and talked with him about that. But at the same time

(Testimony of R. M. Cobban.)

the loan may have been arranged by Mr. Griswold under my instructions, and not by myself personally.

Q. And in the dealings between yourself and Mr. Griswold, if that was the case, the instructions to Mr. Griswold were that he was to go ahead and do what was necessary to be done, and then when it was completed, he was to see to it that the mortgage was given by them, with a hundred dollars added to each one.

A. Mr. Griswold had no such instructions as that. I don't think it is fair, hardly, to go on and make statements of that kind. Mr. Griswold wasn't instructed to do anything of that kind. He was instructed—he would come to me and tell me some persons might want a loan, and tell me who they were, and as a rule I tried to see each of those persons myself. Sometimes I may not have seen them, and instructed Mr. Griswold that we would make such a loan; and, in pursuance of that arrangement, Mr. Griswold would see them, or so report to me that he had seen them and arrange the matter in that way, and the loan would be furnished to them. And Mr. Dodd, Edward Dodd, may have been one of those cases, but I am still of the impression that I had seen Mr. Dodd on my trip up the Blackfoot, and whether that loan proposition had been talked over with him and myself, I am not prepared at this time to say positively. But I know that it either was between myself and Mr. Dodd, or by some one of my representatives. So that there was no question in my mind but what it was fully understood in that way.

(Testimony of R. M. Cobban.)

Q. What was fully understood in that way?

A. That any moneys that we had been—that we had paid out for his benefit, were to be secured by a mortgage as I have stated heretofore, and that he was to pay us a hundred dollars for that assistance in—the assistance and the making of the loan.

Q. Well, if in this particular case your representative was Mr. Griswold, was that instruction given to him then? A. Yes, sir.

Q. Well, do you know anything about the facts connected with the Dodds coming here to Helena?

A. Well, which Dodd?

Q. Edward and Cora Dodd.

By Mr. BICKFORD.—We object to any testimony concerning Edward and Cora Dodd, for the reason that it is not proper cross-examination, and it is irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case. The said entries of Edward and Cora Dodd not being questioned in the bill of complaint herein.

A. No, I don't remember the details now of their coming.

Q. Well, then, you have got some data in your possession that will refresh your memory?

A. I might have.

Q. I think that you can produce a check for a hundred dollars that you gave to Cora Dodd?

By Mr. BICKFORD.—We object to the question and

(Testimony of R. M. Cobban.)

we move to strike out the statement of counsel as to what he thinks the witness can produce, as it is an assumption of counsel that is not supported by any testimony in the case.

A. I haven't anything here with me.

Q. You have not?

A. Not here, no, sir.

Q. Have you got a stub?

A. I have nothing that I have been able to find. I might find something in the stubs perhaps.

By Mr. MAYNARD (To the Witness).—Please make a note of that, Mr. Cobban; I would like to have you look and find the stub in these Dodd cases if you can.

Q. Well, is it not true, Mr. Cobban that Mr. Griswold did take charge of these cases of the Edward and Cora Dodd, and come to Helena with them on both occasions? A. I don't know.

Q. You are not prepared to say but what he did?

A. No, sir.

Q. Have you any knowledge as to whether or not he paid their expenses—their railroad expenses of both Edward Dodd and Cora Dodd and Doc. Watson?

A. I couldn't say.

Q. Don't you know, as a matter of fact, that he charged you with the expenses in that case, and that you were credited with it in your account with him?

A. Why, that might have been so. It wouldn't have been unreasonable at all to think it was so.

(Testimony of R. M. Cobban.)

Q. Well, if as a matter of fact, then, Mr. Griswold did come with these people and pay all their expenses on both occasions, and pay the money himself into the land office for them, how are you able to say that that wasn't the result of a prior agreement which you had made with them that this should be done?

A. Well, I don't think I made any particular agreement that they—with them that Mr. Griswold particularly should do those things, but what I meant by the agreement was that I agreed to loan them the necessary amount for their proving up. And if as a matter of fact Mr. Griswold did come with them and pay the money into the land office, it was simply in conformity with that agreement that I should loan them the money for that purpose. And it was simply for my protection to see that the money was used for the purposes for which it was intended, and they rendered them such services as we could in assisting them.

Q. So up to that time, and under these circumstances that you have named, you think there had been nothing said in any way to Mr. Griswold by you, that while you were about it, as soon as possible, after he paid the money into the land office, and he obtained the final receipt, that they should convey to you?

A. Well, he certainly had no such instructions. If, as a matter of fact Mr. Griswold did the things that you have stated, he very likely had instructions from me to have the loan secured by a mortgage, or if the parties

(Testimony of R. M. Cobban.)

wanted to sell for a certain sum, he was at liberty to offer them so much for their claims after they had proven up, but not before. Mr. Griswold had instructions at all times repeatedly that he never must hold out any inducements that we would buy their claims.

Q. How do you account for the fact, Mr. Cobban, that after Mr. Griswold had paid the money into the land office on the 10th of October, 1899, for Edward and Cora Dodd, that he accompanied them back from the city of Helena to Missoula, and that they left here about ten o'clock of the forenoon of the 10th of October, arriving in Missoula in the forenoon, and that on that same afternoon they reported to your office, and executed the deed, and each of them received a hundred dollars from you over and above what had been paid into the land office as their profit in the case, if there had been no prior agreement, how do you account for that action?

A. I see nothing unusual or uncommon in transactions of that kind. It would simply be the natural result of the transaction that they would come to my office, or would in some way make a settlement of the transaction as agreed upon, to fix up their mortgage, and at the time the offer was made to them to purchase their claims. Or, Mr. Griswold even might have made them offer for me on the way down to Missoula; I don't know as to that. But there certainly was no offer made them through me directly or indirectly for the

(Testimony of R. M. Cobban.)

purchase of their claims until after they had proven up.

Q. Was there any in these two cases that I have now called your attention to of Cora Dodd and Edward Dodd, an express understanding existing between you and Mr. Griswold that he was to do just what he did do in this case?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and irrelevant and immaterial, and further, the question is indefinite.

Q. Namely, to see that these people were brought here to Helena, and all their expenses paid, and he paid the money into the land office and he got the receipt, and took it back to your office, and saw that the deeds were executed, and that they should get a hundred dollars apiece; and didn't you so instruct him that he might proceed in that manner, and authorize him to make that deal with them?

Q. Do you swear that there was nothing ever said to you in your life—by you to Mr. Griswold about a mortgage, and that he was to charge them a hundred dollars apiece for his services, or their servises in locating them upon this land?

A. Why, most assuredly there was time and time again. It was just as clear to Mr. Griswold. He knew just as much about that as any other part of his work.

Q. Still in no case was it ever carried out; but on the contrary the hundred dollars was paid to the entry-

(Testimony of R. M. Cobban.)

man. Now, that being so, how do you explain the fact that such an agreement to convey, existed between you and Mr. Griswold as you say?

A. Well, I saw nothing—there is no—the proposition was clear.

Q. In other words, that doesn't suggest any difficulty or doubt to your mind in regard to the matter?

A. No, sir, it does not.

Q. I call your attention next to the case of Doc. E. Watson, whose deed was executed on the same day, as in the case of Cora and Edward Dodd, and accompanied them and Mr. Griswold to Helena; I will ask if you have more recollection in regard to that case than you did in the case of Cora and Edward Dodd?

A. Yes, sir.

Q. What is your answer?

A. I know that I had a talk with Mr. Watson personally.

Q. Do you remember the fact that they were with Cora and Edward Dodd, and were a part of the party that was accompanied by Mr. Griswold?

A. No, I don't remember that.

Q. Well, is that not the fact?

A. Well, if I remembered it I would have so stated.

Q. Well, do you know whether it was or not?

A. I do not.

Q. Is it not true that Mr. Watson deeded to you on

(Testimony of R. M. Cobban.)

the same day that the Dodds did, Cora and Edward Dodd?

A. Well, it don't appear to be on that day.

Q. Can you account for the fact that it was dated on the same day, but not executed on the 20th?

A. I didn't know that it was dated on the same day. The acknowledgment is certainly—according to that it was ten days later than the date would bear on the deed. The date on a piece of paper doesn't always signify the date of a conveyance.

Q. I ask you to look at the Exhibit No. 111, being the Edward and Cora Dodd deed, and also to Exhibit No. 182, being the Doc. E. Watson deed, and ask you, if as a matter of fact they were not both of them dated on the tenth day of October? A. They are.

Q. Now, then, I ask you if you can explain why it was that the Watson deed wasn't executed until ten days thereafter?

A. I cannot tell you, sir.

Q. Is it not true that the same arrangement was made in the Doc. E. Watson case as in the Cora and Edward Dodd cases, namely, with Mr. Griswold—that Mr. Griswold was to take him to Helena and see that the filing was made, and that the money was paid into the land office for the payment of the land, and was that not done? A. No, sir.

Q. Who did pay the money into the land office?

A. I don't know. The question was asked there, that Mr. Griswold took these people to Helena, is not true.

(Testimony of R. M. Cobban.)

Q. What is there wrong about that?

A. That Mr. Griswold accompanied those people may be absolutely true and correct, but it was at their request that he accompanied them at their request and mine, if such was the case, and I think it was.

Q. Well, if he accompanied Mr. Watson to Helena, and paid the money into the land office, and accompanied him back with these Dodds, was it not by reason of instructions that he had received from you?

A. Yes, sir.

Q. Now, then, in the Dodd case, two of the three that he accompanied, the deed was made on that day. Now, can you give me any reason why the deed was not signed and executed by Mr. Watson on that day?

By Mr. WALSH.—He has already answered that.

Q. What is your answer?

A. I do not know.

Q. Now, don't you know, Mr. Cobban, that the only reason why the Doc. E. Watson deed was not signed, executed and delivered, and he received his hundred dollars on that day, just as the Dodds did, was because of the fact that it was necessary to have his wife join with him in the execution of the deed; and that she was not present, and that he had to go home and get her and bring her down to Missoula in order that she might join with him in the execution of the deed? Don't you know that?

A. I don't know what the reason was that there was a delay. I so stated a little time ago.

(Testimony of R. M. Cobban.)

Q. Well, how much did you pay Mr. Watson for his conveyance? A. I pay Mr. Watson?

Q. Yes, over and above what the expenses and what the price of the land was, and so on? I mean for his property?

A. Well, I presume a hundred or a hundred and twenty-five dollars—in that neighborhood.

Q. The same as you paid the others?

A. I don't know whether it is the same as I paid the others or not, but in that neighborhood.

Q. Now, then, if you paid them that amount of money, wasn't that by reason of the prior agreement which you had made with him through Mr. Griswold, your agent, that that should be done?

A. Mr. Griswold?

Q. Yes, sir. A. No, sir, it was not.

Q. Didn't you say that you had a talk with Mr. Griswold and instructed him to make this arrangement? A. To make a loan to Mr. Watson?

Q. Yes, and that you were to charge him a hundred dollars for it?

A. I talked with Mr. Watson personally.

Q. Where did that conversation take place?

A. I cannot tell you.

Q. Can't you tell when?

A. About the time that he made his entry, I think.

Q. And what was the substance of that conversation?

(Testimony of R. M. Cobban.)

A. The substance of the conversation was that he wanted to borrow the money to prove up on his claim; and the money that was necessary for his proving up, and I agreed to loan it to him, and charge him a hundred dollars for what services I should render for him in the matter.

Q. You took a receipt from him, didn't you?

A. No, sir, I did not. I may have done so, though.

Q. So it was in pursuance of that conversation that he went ahead and located the land and you paid him a hundred or a hundred and twenty-five dollars?

A. It was in pursuance of that knowledge that he could make the loan probably that he made it—went ahead with it.

Q. When did he change his mind about mortgaging or selling to you?

A. The only efforts—the only time that I know when he changed his mind was after he had proved up.

Q. Do you recall any of the facts and circumstances connected with that change of heart or mind?

A. No, sir, but I presume it was the very day, or the same as those other transactions that I have stated.

Q. You are just exact now, aren't you?

A. Well, I know absolutely some things about that. I know that there was one. You have asked me when it was that this man had a change of heart. You have asked me to guess about it.

By Mr. WALSH.—You have asked him to guess when

(Testimony of R. M. Cobban.)

it was, and when he guesses you object to it because he does guess.

Q. Now, calling his attention to the particular time, and then if he knows, when Doc. E. Watson changed his mind and made up his mind to convey, rather than to mortgage, then the witness is going on to guess as I understood it.

By Mr. WALSH.—He couldn't do anything else but guess.

Q. I guess that is right.

By Mr. WALSH.—The question was asked him whether he knew, and he said he guessed, and counsel then told him to tell that.

By the EXAMINER.—Let the counsel propound the question and the witness answer.

Q. Well, have you any knowledge on the subject?

A. Why, it was after he had proved up; it couldn't have been otherwise.

Q. I call your attention to the cases of Marion B. Watson and his wife and mother; and I show you Complainant's Exhibit Nos. 187 and 188. (Counsel hands witness paper.) What was the reason for those two different dates, do you know, Mr. Cobban?

A. I think they were two entirely different purchases. They were two different pieces of property, and they were purchased at different times.

Q. Were they both of them—the location made by Marion B. Watson?

(Testimony of R. M. Cobban.)

A. Marion B. Watson and Katie Watson.

Q. Well, those that represent the Marion B. Watson location and Katie Watson location?

A. Yes, sir, I suppose so, I wouldn't remember the descriptions.

Q. Well, do you recall any of the facts and circumstances connected with this case?

A. Which case?

Q. Of the entries and the sale of the lands by Marion B. Watson and his wife and mother.

A. Well, his mother, is that in there, too? I hadn't seen that; you didn't show me that.

Q. Yes, sir. A. Yes, sir.

Q. Well, now, then, it is true, is it not, that those deeds were made here in Helena, on the 28th of September, on the same day that final proof was made in the cases? A. Yes, sir.

Q. Do you know who paid the money into the land office?

A. No, sir, I don't know whether it was Mr. Watson or Mr. Catlin, or Mr. Griswold, I don't know.

Q. Well, do you remember of having had any talk or conversation with these parties by which they made the final payments and deeded to you on the same day?

A. Yes, sir.

Q. Who did you have the talk with?

A. I think I talked with Marion Watson and with Harriet Watson, his mother, myself.

Q. You are not positive in regard to that, are you?

(Testimony of R. M. Cobban.)

A. Not absolutely.

Q. Are you prepared to say that Mr. Griswold did not have charge of this matter, too, as he did in the Dodd cases?

A. My recollection is that I was at the Cosmopolitan Hotel in the city of Helena on the day that those proofs were made. And that I instructed Mr. Griswold, or Mr. Catlin, I am not certain which one it was, to make them an offer for their claim after they had proven up, and word came back to me that they would accept the proposition, and I think that I saw Mr. Watson and talked with the people myself before the conveyances were made; and my recollection is that I drew those deeds myself. Yet, these facts are not—I am not absolutely clear about them. That is my recollection about it.

Q. What makes you think that you drew the deeds yourself?

A. Because I have a recollection of drawing some deeds there at the hotel and I think it was in these particular cases that I did draw them.

Q. Were the deeds afterwards delivered to you?

A. They were.

Q. Did you get them recorded? A. I did.

Q. Did you get them from the recorder's office?

A. Well, they reached me; I am not certain that I carried them from the recorder's office.

Q. Well, what did you do with them after you got possession of them?

(Testimony of R. M. Cobban.)

A. Well, they may be in my possession at the present time, or they may have been sent to Mr. Bickford together with the abstracts as I got them from the office, or they may be out of existence; they may be among some papers that I haven't found as yet in connection with this case. I haven't made a search particularly for those deeds as yet.

Q. Well, you can see yourself, Mr. Cobban, that an inspection of those deeds would at once establish the fact as to whether you drew them or not, would it not?

A. Yes, sir.

Q. And that is the reason why I have suggested a number of times, and asked you to produce the deeds, or such as you may have in your possession for the purpose of enabling us to find out what the fact is, as they come up in the various forms. Well, now, what were you doing here in Helena on that date?

A. Well, that would be a very hard thing for me to say, just what I was doing here. I had business here frequently in Helena.

Q. Well, have you any recollection as to what called you here on that day? A. No, sir.

Q. You are not certain that you were here at all, are you?

A. I am pretty certain that I was.

Q. Well, why was it, Mr. Cobban, that you say that word was brought to you from Mr. Griswold or Mr. Catlin, or someone, that was attending to the business, that they would accept your proposition?

(Testimony of R. M. Cobban.)

A. Because I asked a party to see them and make them the offer that I stated.

Q. Well, if you were here why didn't you do it yourself?

A. Because it perhaps wasn't convenient for me to do it at that time. They were—these people were stopping at the Cosmopolitan Hotel. I am not certain whether I was stopping there at the hotel or not. I may not have been at the hotel. I may have been out attending to some other business at the time; but I am very certain that that was the routine that we went through.

Q. Well, did you pay them the hundred dollars yourself, personally? I mean deliver the money over to them, or did you do it through Mr. Griswold?

A. That I am unable to say at the present time.

Q. Your recollection on the whole matter is very indistinct and indefinite, is it not?

A. It isn't clear, as I have stated heretofore, I had numerous transactions during that period, and there was no occasion for me taxing my memory with the details—each detail.

Q. Well, Mr. Watson testified that Mr. Griswold paid the money into the land office for himself and his wife, and mother, and that they were each paid by him in money a hundred dollars. Now, have you any reason to doubt that that was the case? A. No, sir.

Q. "And that when we were on our way to Helena

(Testimony of R. M. Cobban.)

that Mr. Griswold stopped at the office and Mr. Catlin paid them $35.00 for expenses—paid Mr. Griswold $35.00 for expenses, to enable them to come up here and do their business." Have you any reason to doubt that?

A. No, sir.

Q. And the second time when the final payments were made the money was secured from Catlin for the purpose of enabling them to come here and make their filing. Have you any reason to doubt that?

A. Well, they couldn't have—there is something wrong there. There couldn't have made their filing on the second trip.

Q. No, I mistook myself, Mr. Cobban; I meant when they made their final proofs. What is your answer?

A. Why, I see no reason to doubt it. It was simply—

Q. I read from the record on page 4858 and 4859: "Who did you deliver those deeds to? A. Mr. Griswold. Q. Gave them to Mr. Griswold? A. Yes, sir. Q. And he paid you the in currency in the Cosmopolitan Hotel the sum of $300.00, did he not? A. He paid us the sum of $550.00; taking our money that we got as a loan, deducted that out. Q. He deducted out before he paid it to you? A. Yes, sir. Q. How much did you actually receive from him in case? A. It seems to me it was about $100.00 Q. $100.00 apiece? A. Yes, sir. Q. And then you went home, and the transaction was closed up so far as you were concerned, was it not? A. Yes, sir. Q. And you didn't know

(Testimony of R. M. Cobban.)

who you was to sell to? A. No, sir, not until after we had made final proof. Q. Now, had any agreement, express or implied, been made to do this thing, which you did do? A No, sir."

Now, how do you understand, Mr. Cobban, from that testimony, if you had had no dealings at all with Mr. Watson, that he could swear that he didn't know anything about who he was to sell to, or whether he was going to sell, until the deeds were presented to you after the final proofs were made?

A. Well, there certainly was no agreement between myself, or anyone acting for me, that Mr. Watson, or any of those Katie Watson, or Harriet Watson—that they were to sell in any way, shape or manner. In fact the agreement was right positively to the contrary.

Q. Now, Mr. Cobban, you don't know what agreement was made between the Watsons and Griswold, do you, in your absence?

A. Why, I have every reason to believe that there was no agreement made.

Q. Why?

A. In the first place, it was absolutely contrary to any instructions from me. It was contrary to the instructions which I had given Mr. Griswold that he should make no bargains for the purchase of any of those claims beforehand; and from the very nature of the thing, and the testimony of Mr. Watson, and Mr. Griswold's own sworn statement, it is apparent that

(Testimony of R. M. Cobban.)

there was no agreement. I certainly have every reason to believe there was none.

Q. You refer to the testimony of Mr. Griswold. Mr. Griswold does say that he paid this $300.00 over to Mr. Watson and his wife and his mother at the Cosmopolitan Hotel after the deeds were executed to you and delivered to him as your agent, in pursuance of the express understanding and instruction that he had received from you that he was to do that very thing.

A. Yes, sir.

Q. And Mr. Watson swears that he did deed to you on that day and did receive that money?

A. Mr. Griswold gives this testimony; he swears before he began a blackmailing suit, when there was no incentive existing upon his part, that there was no such thing. After beginning a blackmailing suit, then he comes in and testifies that there was an agreement.

Q. But you refer to the affidavit that you and your attorneys extorted from him; that is the testimony you refer to, is it not?

A. I refer to his testimony in the United States land-office.

By Mr. WALSH.—Just a moment. We object to the question upon the ground that it is not proper cross-examination; and we object particularly to the language of counsel in speaking of testimony extorted from Mr. Griswold, for the reason that there is no justification for any such remark in this testimony, as given by any

(Testimony of R. M. Cobban.)

body that anything was ever extorted from Mr. Griswold.

Q. Well, was that the testimony—what did you refer to when you said Mr. Griswold's testimony in this Watson matter, was in mine?

A. I referred to his sworn statement in the cases; as a witness in the cases in the United States land office.

Q. Well, I am asking you now, as to how you account for the fact that this $300.00, this $100.00 a piece was paid over at the Cosmopolitan Hotel just as Catlin and Watson both swear, if it wasn't by reason of a prior agreement that it was to be done?

A. Well, it certainly wasn't in conformity to a prior agreement. As I have stated heretofore, Mr. Griswold was instructed, after proof was made, to go to these people and offer them so much money for the purchase of their claims. If they wished to take it we would accept a deed for that instead of our mortgage; and they accepted the proposition.

Q. Well, how do you know, Mr. Cobban, but what Mr. Griswold, in his dealings with these various entrymen and entrywomen, imparted to them the instruction which you now say you gave him, and that was, that he was instructed to go to them after the making of the final proof, and make the offer to purchase, if they did not care to execute the mortgage. How do you know that he didn't make some offer different from what you say he was instructed to make?

(Testimony of R. M. Cobban.)

A. Well, I don't know what Mr. Griswold might not have done. I have every reason to know that he is a very unreliable man.

Q. So that, if, as a matter of fact, Mr. Griswold in his dealings with these people, conveyed to these various people the information, and the instructions which he had received from you, why that would make it clear as to their whole dealings, would it not, and account for the ease and the readiness with which they did convey, after they had made their final proof.

By Mr. WALSH.—We object to that as calling for an opinion from the witness, and upon the further ground that it is not proper cross-examination, and it is irrelevant and immaterial.

Q. Can you answer that question, Mr. Cobban?

A. Well, I don't know as I will. If you will put questions any way reasonable I will answer them. I am very glad to give you all the information I can, but I don't think that is a proper question in the shape it is now in.

Q. What is that?

A. I don't think it is a proper question, the shape it is in.

Q. Don't you understand it, Mr. Cobban?

A. Well, it needs a good deal of explaining. I think the question could be put much plainer.

Q. Very well, Mr. Cobban, I will make it plainer. You say you instructed Mr. Griswold, after the final

(Testimony of R. M. Cobban.)

proof was made, to go and offer these people a certain amount of money for their claims? A. Yes, sir.

Q. Very well, I ask you if you are prepared to say that in his dealings with these people he didn't impart to them the instructions which he had received from you?

A. Why, I have every reason to think that he did impart to these people the instructions that he received from me.

Q. Undoubtedly, if he was authorized to offer that certain amount of money.

A. I haven't testified to anything of that kind in any way, shape or manner. I have testified directly to the contrary. If there was any offer in any way, shape or manner, or anything that would lead these people to believe that they were to sell those claims to us, made by him, it was contrary to the instructions that I had given him. There was no offer of that kind.

Q. If I am not very much mistaken, you did so testify and the stenographer has already taken it down.

By Mr. WALSH.—Well, let us not get into a controversy over this matter.

By the EXAMINER.—No, just put the questions to the witness.

A. I will state here that if I instructed Mr. Griswold other than as I have stated now, that it was necessary—if I testified that I instructed Mr. Griswold other than I have just stated, it was in answer to a blind question, put in such a way that I misunderstood it.

(Testimony of R. M. Cobban.)

Q. Well, what have you to say now as to whether or not Mr. Griswold had received instructions from you, that when they had made their final proofs, he should go to them and offer them a certain amount of money?

By Mr. WALSH.—What do you mean by that? We object to the witness answering the question at all in that shape.

Q. I mean, as a general rule, in his dealings with these entrymen and entrywomen, where he himself appears to have had charge of the matter?

A. Mr. Griswold had no authority, except in a very few cases, to make any offer for the purchase of claims, and then only by express instructions from me.

Q. Very well. I ask you then if, in the few cases that he did receive the instructions from you to make the offer, how you know but what he conveyed, during the negotiations, the idea that the entrymen were to convey to you?

A. Well, I have every reason to believe that he did not.

Q. Why have you every reason to believe that he did not?

A. In the first place, his instructions were that he should not, and in the second place, he testified that there was no agreement of that kind. As a witness, he testified to that fact. I don't think, as low as Mr. Griswold is, at that time he would have testified to that, if—I don't believe he would have gone and made that offer,

(Testimony of R. M. Cobban.)

and then come right on the witness-stand and swear that he knew of no offer.

Q. Very well. Now, then, I call your attention to the transactions that are covered by John B. Reeve and his wife, and his two sons in law, their wives, that is, his two daughters and his sons in law, Mr. Starkie, and Mr. Ehle. Do you recall to mind the fact and circumstances of those cases? A. Yes, sir.

Q. You knew Mr. Reeve, didn't you? A. I did.

Q. You had a personal acquaintance with him a little while previous to entering into this transaction?

A. I have known him for quite a while.

Q. What is that?

A. I had known him for quite a while, yes, sir.

Q. Well, was that a straight mortgage and loan proposition? A. Yes, sir.

Q. In the six cases? A. Yes, sir.

Q. Whom did you have the dealings with in that case, anybody else besides Mr. Reeve for the six?

A. Yes, sir.

Q. Who did you—who can you specify in that case?

A. Well, with Mr. Reeve and Mr. Ehle and Mr. Starkie.

Q. When did you first see Mr. Reeve in regard to this matter? A. I couldn't tell you.

Q. You say you had known him for some years?

A. Yes, sir.

Q. Did he apply to you for the loan?

A. Yes, sir, he did.

(Testimony of R. M. Cobban.)

Q. Well, you knew that he had no money of any appreciable amount to pay for any loan, did you not?

A. Yes, sir.

Q. And you knew that you would have to pay all of the expenses that were incident to that transaction, did you not?

A. Yes, sir, the greater part of it anyway.

Q. And the same would be true of his wife, Eliza?

A. Yes, sir.

Q. And the same was true of the daughters and the sons in law, was it not?

A. Yes, sir.

Q. Well, have you any data in your possession which bears upon this claim, any checks which you gave these people? A. No, sir, I have no checks.

Q. Why?

A. Because I don't know whether I paid them in checks or not. I haven't been able to find the checks if I had them, or if I gave them checks.

Q. Well, now, why was it, when you knew Mr. Reeve's financial condition, and the six people that I have named, and that you would have to pay all the money that was necessary; how did you come to enter into an agreement with them that you would help them?

A. Because I was asked if I would make a loan, and the security was ample, and the timber claims that they had were sufficient security for the loan.

Q. Who had made these selections of the timber claims for them?

(Testimony of R. M. Cobban.)

A. Well, I don't know whether they found the claims themselves or not. But Mr. Albert Jemison went onto the ground with them I think. But whether he showed them the claims, or whether they found them themselves, I am unable to say.

Q. Well, how did Albert go on the ground for them, and why did he go on the ground?

A. Because they went to Albert and asked him to go, I suppose. I think that is as I recollect the testimony as it was given here.

Q. I am not referring to the testimony that was given here; I am referring to your knowledge on the subject. I am not relying in a great degree on Mr. Reeve's testimony. A. I don't know.

Q. You don't know? A. No, sir.

Q. Well, isn't it true that these locations were made by Mr. Jemison either while he was working for you or working for Mr. Griswold? A. I think it was.

Q. And isn't it further true, Mr. Cobban, that the engagement, the business relationship which existed between yourself and Mr. Griswold, and Mr. Jemison, Albert Jemison and E. R. Kilburn was such that when entrymen and entrywomen came into your office in Missoula, bearing—having in their possession a slip of paper on which their name appeared, and a description of the land, and the names of the four witnesses, and signed by either Mr. Griswold or Mr. Jemison, or Mr. Kilburn, that that was sufficient data to have Mr. Catlin

(Testimony of R. M. Cobban.)

make up the filing papers, and take charge of the proceedings without any further examination from you?

A. Yes, sir, on request of these people—they brought in—they often times brought in some memorandum statement perhaps, that these parties wanted to file on some piece of land, and the description might be put down on that slip. Invariably the people bearing those came with the request that we do make out papers for them; and as a rule the proposition was discussed as to their taking up claims wherever there was one. In some instances there were none. There were papers made up in our office in a similar way for people whom we never saw again, and whose claims we never got. We made up the papers there for anyone. It was only a few minutes' work. Mr. Catlin was in that business, and it was a courtesy that I—well, I was dealing in timber lands—that I would make up these papers for people that I never expected to see again, just the same as the matter of taking acknowledgments of people without any charge. But in these instances, nearly always there was an understanding that it was to be charged for in the end where the loan was to be made.

Q. Well, was that substantially the case in this Reeve's family case?

A. Well, I hardly knew what you mean by "substantially."

Q. Well, I mean that they went out there and were located by Albert Jemison, who was working directly for you, or indirectly for you, and for Mr. Griswold in

(Testimony of R. M. Cobban.)

making their locations, and that they came in with this data, and it went on in that way.

A. I don't know that these people brought in any data at all from Mr. Griswold or Mr. Jemison. I know that they came and wanted to make arrangements for loans on timber claims.

Q. Well, you don't know it from that fact, do you?

A. No, sir, I do not.

Q. Who did you rely upon to approve of the locations?

A. I relied upon the estimate that I would get on the claim by Mr. Hambly.

Q. By Mr. Hambly?

A. By Mr. Hambly, yes, sir.

Q. Do you remember when he reported to you that the estimate was all right?

A. No, sir; I do not; but I think during the time that the claims were in advertisement.

Q. Where is Mr. Hambly now?

A. I don't know whether he is on the Payette river in Idaho, or whether he is in California. He was on the Payette river all winter, and this spring he went to California to do some estimating.

Q. Do you know whether he has returned or not?

A. I don't know whether he has returned or not. He was expected back on the Payette River.

Q. Did he do all the estimating for you?

A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Didn't he know all about this transaction, and about what you were doing there?

A. Well, I don't know whether Mr. Hambly knew or not. I don't know to what extent his knowledge went.

Q. His business was solely to make estimates on locations of land that were made by Mr. Griswold and Mr. Jemison, wasn't it? A. No, sir; it was not.

Q. What else did he have to do?

A. Mr. Hambly's business was to estimate the timber that I gave him the descriptions of and report to me.

Q. And the only descriptions were of the people for whom locations were made by yourself or Mr. Griswold, or Mr. Jemison, or someone else in your employ?

A. Why do you insist upon being so unfair? When repeatedly it has been put in evidence that large amounts of land were estimated both for scrip land and homestead land and others. It seems to me very unfair to insinuate all the time.

Q. Excuse me, Mr. Cobban, I am not asking you—you misunderstood me. I have no interest whatever in your dealings outside of the locations that were made.

A. Well, it don't seem so from the question.

Q. Well, I assume from your great intelligence that you know what I meant. I am not asking about your other locations.

By Mr. WALSH.—Oh, no; you don't mean to, but you asked him if his work wasn't confined to estimating timber on those claims.

(Testimony of R. M. Cobban.)

Q. What I meant to say was that all that he had to do with reference to the lands that are named in the bill of complaint, was simply to estimate the timber?

A. Yes, sir.

Q. That is what I asked you, and that is what I understand.

A. Yes, sir; that is what you asked me.

By Mr. WALSH.—You asked him if Mr. Hambly didn't have anything at all to do except to estimate the timber on those lands.

Q. He had nothing to do with locating the people on their locations.

A. No, sir; he certainly did not.

Q. And that was done, as I was saying, by you personally, or by Mr. Griswold, or Mr. Jemison, or Mr. Kilburn?

A. All the people, yes.

Q. All the people themselves, that is, wherever they did.

Q. Well, now then, what have you to say in regard to the Reeve's cases. Did they locate themselves?

A. Well, I don't know positively.

Q. Well, now think hard, and see whether you know, as a matter of fact, that they didn't locate themselves, and that you located them yourself, through your representatives in the field.

A. I think that Mr. Reeves and some of those people picked out their own claims. They went to Mr. Jemison and Mr. Jemison went on to the ground to see these claims, and so they—showed them where some of the

(Testimony of R. M. Cobban.)

claims were, but I think some of them found their own claims.

Q. Well, in that matter, you haven't any distinct recollection about it, have you?

A. Well, I wasn't on the ground myself.

Q. Now, I show you Exhibit No. 53, the deed of Mr. Reeve and his wife. (Counsel hands witness exhibit referred to.) Now, what was the true consideration for that deed, Mr. Cobban?

A. I think about twelve or thirteen hundred dollars.

Q. Have you any definite knowledge on the subject?

A. No, sir; I have not.

Q. Was the purpose of putting it at two thousand dollars, as indicated in your testimony this morning?

A. Yes, sir.

Q. And does the same reply go to Exhibit No. 4?

A. Yes, sir.

Q. And the same in Exhibit No. 17?

A. Still, in this case the consideration marked in the deed is $800.00. I presume the actual consideration was in the neighborhood of $600.00.

At this point an adjournment was taken until July 15th, 1902, at ten o'clock.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Tuesday, July 15th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

R. M. COBBAN recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, when did you have your first talk with Mr. Reeve about this land?

A. Well, about the time he made his entry; I don't remember just when.

Q. Was it before or after?

A. I think it was before his entry.

Q. What makes you think so?

A. Well, I think that he told me that he wanted to take up the claim and did not have the money to prove up with, and wanted to arrange for the loan.

Q. For whom? A. For himself and his wife.

Q. Anybody else?

A. Well, I don't know that he arranged for any loan for any one else, but the names of Mr. and Mrs. Starkie and Mr. and Mrs. Ehle were mentioned as wanting to take up claims, and that they would probably want loans.

Q. Had you met Starkie or Ehle or their wives at this time? A. Yes, sir.

Q. All of them?

A. I had met Mr. Starkie a good many times, and I am not certain whether I had ever seen Mr. Ehle up to that time or not.

Q. What arrangement did you make with Mr. Reeve in regard to the conditions under which he could have the money for himself and wife?

(Testimony of R. M. Cobban.)

A. I arranged on the basis that, if the timber claim justified it, if the estimates were satisfactory, I would make him a loan of the necessary amount for proving up on his claim, his and his wife's claim, and for one hundred dollars that they were to pay me for the loan and for the assistance that I would render them.

Q. That was one hundred dollars apiece?

A. Yes, sir. This loan was to be secured by a mortgage on the land as soon as he could get a title so that he could give it.

Q. And in this case was this offer accepted?

A. It was.

Q. And in this case what were the services to be that you were to render?

A. Well, it was the assistance in helping to make his papers, I think, and in every way possible, and in assistance in the location, finding the location. As to his own location, I think he had been on the ground at that time, but my recollection is that he had not made his filing; he had been on the ground already.

Q. And selected the land?

A. Yes, sir; and he said something to me about Mr. Griswold, about having had some talk with Mr. Griswold and I told him I would take care of that in the hundred dollars that he was to pay me.

Q. Why, if he had already selected his land, were you to charge him one hundred dollars; that was the principal work, wasn't it, finding the land for him?

A. No, sir. There was a cost incurred in having this

(Testimony of R. M. Cobban.)

land estimated and seeing whether or not it was all right, and there certainly was a consideration for the use of the money and for services in different ways.

Q. Now, I want you to name particularly, just as exactly as you can, Mr. Cobban, what the services were that you were to receive one hundred dollars for in these cases. I understood that the principal consideration always was the fact that, by reason of your special knowledge of the country, you were able to place these people on their locations. Now, was that true or not?

A. Yes, sir; generally it was.

Q. That was the principal thing, was it not, the principal service that you were to render a person?

A. Why, yes, that was one of the principal things, and there was the looking after their case and the providing of the money for paying their expenses on their loan. There was no interest charged for the money that was advanced for expenses up to the time of proving up, other than what was included in this general charge.

Q. But there would be no case to look after, would there, unless you succeeded in finding the location in the first place? A. No, sir.

Q. Then, as a matter of fact, in each and every case the basis, the foundation of the charge would be the finding of the location which you would afterwards accept?

A. Yes, sir.

Q. And then the other elements would be, as I understand it, the amount of money that it would be necessary to advance to pay their traveling and hotel ex-

(Testimony of R. M. Cobban.)

penses in cases where it was necessary and to pay all of the land office charges and to pay for the publication of the notice and to pay for the land itself; those would be the principal items, would they not? A. Yes, sir.

Q. Now, if, as a matter of fact, Mr. Reeve, at the time of this conversation that you had with him, had already made his location, why was it that you were to charge him one hundred dollars?

A. For the very reason that he was to pay Mr. Griswold for the work of helping to find the location, so he told me, and Mr. Griswold was in a way working for me. I expected to pay Mr. Griswold for each of the locations on which I made a loan of this kind five cents per thousand for any claim that he showed like those in the Reeve cases. That was what the charge of one hundred dollars to these people was for, for that five cents per thousand and for the other expenses connected with those claims.

Q. How much would that be that you would pay Mr. Griswold on an average range on each location?

A. Well, it would range from twenty-five to sixty dollars; perhaps it would average forty dollars a claim.

Q. Well, then, if it averaged forty dollars a claim that you were to pay Mr. Griswold, you had sixty dollars profit besides? A. Yes, sir.

Q. Then, you agreed with Mr. Reeve that you would pay Mr. Griswold one hundred dollars?

A. No, sir; I did not agree with Mr. Reeve that I would pay Mr. Griswold one hundred dollars.

(Testimony of R. M. Cobban.)

Q. Didn't he say that he had previously entered into an agreement with Mr. Griswold by which he would pay him one hundred dollars, and that you agreed to make that good?

A. I don't know that he had agreed—I don't remember that his conversation was that he had agreed to pay Mr. Griswold one hundred dollars, but that he had agreed to pay Mr. Griswold.

Q. How much? A. I don't remember.

Q. Do you remember whether he told you?

A. No, sir; I can't say that he did tell me, but I think he did.

Q. But you have no recollection as to the amount that he said he was to pay him? A. No, sir.

Q. As a matter of fact, at any time thereafter in any settlement that you had with Mr. Griswold, did you pay Mr. Griswold any specific amount for the location of Mr. Reeve and his wife other than the five cents a thousand?

A. No, sir.

Q. Why not?

A. Because Mr. Griswold was working for me on that basis.

Q. Then, if you agreed with Mr. Reeve that you would pay the amount that he had agreed to pay, you meant that you would pay him what you were under contract with him to pay; is that what you meant?

A. I meant that I would settle with Mr. Griswold.

Q. And that you would relieve Mr. Reeve from any obligation? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Was that before the filing, do you think, or after?

A. I think it was before the filing.

Q. Did you see Mr. Reeve between that time and the time of the making of the final proofs in the case?

A. Yes, sir.

Q. How many times, in regard to this matter, I mean?

A. I have no idea.

Q. Have you any recollection as to anything that occurred between you and himself? A. No, sir.

Q. Do I understand that at this conversation that you now say you had with him it was distinctly understood that he was to receive the money that was necessary?

A. No, sir, it was not; it was understood that if the timber on his land was of sufficient value to warrant the loan, it would be made to him.

Q. As a matter of fact the locations were pointed out to him by Mr. Jemison, were they not?

A. As I stated yesterday, I am not certain that Mr. Reeve's own claim was pointed out to him by Mr. Jemison, but I think Mr. Jemison went with the party into the mountains to render them what assistance he could.

Q. Who do you refer to as the party?

A. Mr. Reeve and his wife and Mr. and Mrs. Starkey.

Q. And Mr and Mrs. Ehle? A. I think so.

Q. The six, and you say that Mr. Jemison was to render them all the assistance he could?

A. Yes, sir.

Q. Why was he to do that?

(Testimony of R. M. Cobban.)

A. In consideration of the hundred dollars that was being charged to these people.

Q. Charged to what people?

A. Charged to Mr. Reeve and to his wife and to each of these other people.

Q. Then do I understand you that this talk extended and embraced his wife and four other claims?

A. Yes sir; each of those people made the same arrangement.

Q. Did they make the arrangement or did Reeve make the arrangement for them?

A. They made the arrangement; that is, I mean to say, just as I stated before, that Mr. Reeve made the arrangement for Mrs. Reeve, but I think that Mr. Starkey—well, I am quite certain that Mr. Starkey came in and talked the matter over at the same time that Mr. Reeve did. My recollection now is that Mr. Starkey made the arrangement for his wife.

Q. The same arrangement as to the giving of the mortgage and the hundred dollars that was made in the Reeve case? A. Yes, sir.

Q. When did you have your talk with Mr. Ehle?

A. Well, about the same time; I don't recollect just when.

Q. You have no distinct recollection on the subject, have you?

A. Yes, sir, I know I had a talk with Mr. Ehle.

Q. Do you fix the time and place, or do you know that simply because that was a rule that you adopted?

(Testimony of R. M. Cobban.)

A. No, but I know that I had a talk with him; I recollect, but I don't remember the time or place. I think it was in my office, I am quite certain of that, but the time I cannot fix.

Q. And the same contract was made between you as in the other cases? A. Yes, sir.

Q. So that you felt under obligations then to carry out your end of it?

A. Certainly; it was a business transaction on my part.

Q. And that the locations were made by Jemison under that agreement were part of the services that he rendered, were they not?

A. Well, I think Mr. Jemison was in Mr. Griswold's employ at that time; I am not certain whether he was or not, but I think he showed some of those claims.

Q. If he did show them the claims and he was in the employ of Mr. Griswold, you communicated the fact to Mr. Griswold that you had made these arrangements with these people, and that he should see that the necessary assistance was forthcoming, did you not?

A. In some of the instances—Mr. Reeve and Mr. Starkey went up before their wives, and I think that they went and asked Mr. Jemison, and Mr. Jemison showed them claims or went with them onto the ground before they went up with their wives, and that it was after their return that I had the talk with Mr. Reeve, but before their filing. He then informed me that Mr.

(Testimony of R. M. Cobban.)

Jemison had been on the ground with him to see these claims.

Q. Was the service that Mr. Jemison then rendered Mr. Reeve and Mr. Starkey an entirely gratuitous one?

A. Well, it was right then as far as I knew. I had not instructed Mr. Griswold or Mr. Jemison at that time to show those claims or to give them any assistance.

Q. Did you pay Mr. Jemison for that service?

A. No, sir, I think I paid Mr. Griswold for that service; that is my recollection of it.

Q. In the location of the two first?

A. Yes, sir.

Q. Was that by reason of the general contract that existed between you?

A. It was by reason of an understanding between Mr. Griswold and myself, not embodied in the written contract.

Q. If that was so, and there had been no talk between you and Mr. Reeve in regard to the matter and you were in the habit of receiving one hundred dollars in the service in making and finding the locations, how was it that Mr. Griswold went to work and located these people before the contract had been made by which you were to get one hundred dollars for that service?

A. I don't know that Mr. Griswold—well, as I explained before, Mr. Reeve stated to me that he had promised Mr. Griswold to pay him for showing him locations.

Q. Now, wasn't it a matter of fact that those locations of all these people were made distinctly by reason

(Testimony of R. M. Cobban.)

of the general contract which is in this case between you and Mr. Griswold, and no other?

A. No, sir, it was not.

Q. And that there never was a word said in any way by you to Mr. Reeve or his wife or to Mr. Starkey or his wife or to Mr. Ehle or his wife in regard to the matter other than this, that they were to go up there and take the locations which would be pointed out to them by Mr. Griswold or by Mr. Jemison, who was then in his employ, and that they were to receive the memoranda from them and go down to your office, and that Mr. Catlin or someone in your employ would make out the filing papers; wasn't that the fact?

A. No, sir, it was not.

Q. Isn't it the fact that just exactly that occurred?

A. No, sir, it is not.

Q. In what respect did it not occur?

A. I have already—

Mr. WALSH.—One moment. Don't answer that. We object to that as not proper cross-examination.

A. I have already stated the transaction and the circumstances connected with it.

Q. Well, it is true that these locations were made by Mr. Jemison, except as you have made the exception in the case of Starkey and Reeve, is it not?

A. Well, no, not exactly. Mrs. Ehle did not take the selection that was then made, did not prove up on that selection.

Q. I did not ask you that, sir.

(Testimony of R. M. Cobban.)

The MASTER.—Let him finish.

A. I think that you asked if these people were not located by those—

Q. Wasn't Mrs. Ehle located at the same time with the others? A. She was.

Q. Now, go on and point out where there was any error in my statement.

A. Well, I don't think I would state—

Mr. WALSH.—That is not proper cross-examination at all; I don't think the witness ought to be called upon to answer that kind of a question.

Q. I say that these locations were made by Mr. Griswold through Mr. Jemison, were they not?

A. I have already stated, and given you a full explanation of it.

Q. As a matter of fact, they did come to your office and the filing papers were made by Mr. Catlin, were they not? A. I believe so.

Q. As a matter of fact he did go with them to the land office at the time of the filing?

A. I don't know whether he did or not.

Q. In each case where the money was paid into the land office, the money was paid in by you or Mr. Catlin in their behalf, was it not?

A. I think likely, and yet I am not positive. It was either paid in by us or paid in by themselves under the loan.

Q. You have no recollection of having delivered to

(Testimony of R. M. Cobban.)

any one of them the purchase price of the land previous to their going to the land office, have you?

A. I have not. It was just as reasonable, however, that I would have given them the money, because I was acquainted with them. It was a matter of the proposition of the loan, and it would depend somewhat on circumstances. It might have been paid in by myself through Mr. Catlin, or it may have been given to them, themselves, and they paid it in.

Q. As a matter of fact, in each and every case it was paid into the land office by someone from your office, was it not?

Mr. WALSH.—He has answered that question.

A. I have already stated clearly that I did not know.

Q. You have no recollection or any knowledge whatever of the money having been paid in by them in person? A. I so stated just a moment ago.

Q. And it is true that in each case where the proof was made and the money paid into the land office, that almost immediately thereafter a conveyance was made to you by these parties, is it not?

A. Well, I think I purchased those claims perhaps the same day, after they proved up.

Q. That is, that the purchase was made on the 25th of November, 1899, by you, the day that the final proofs were made and the money paid into the land office, in the case of Mr. and Mrs. Reeve and in the case of Mr. and Mrs. Starkey and in the case of Mr. Ehle?

(Testimony of R. M. Cobban.)

A. Why, I think very likely; I very likely purchased the same day.

Q. You know it was, do you not?

A. I do not; your records should show the date.

Mr. MAYNARD.—Do you concede that that is the fact, that the record shows that?

Mr. BICKFORD.—We concede nothing. We concede it if the record shows it.

Mr. MAYNARD.—I ask you if you concede that the record does show that?

Mr. WALSH.—We concede that the record shows it, if it does show it.

Mr. BICKFORD.—You have the record here, and what is the necessity of taking up fifty or sixty pages stating what the record shows? It is not necessary to ask this witness or for the witness to concede it.

Q. If the record shows that the conveyance was made on the same day that the final proofs were made, you don't question that, do you? A. I do not.

Q. And you concede that to be the truth?

A. I concede nothing but what is shown there.

Q. You have no reason to doubt its truthfulness?

A. I think that I made the purchase of those claims on the day of the proof or within a day or two thereafter.

Q. Now, then, had it been agreed upon prior to that date just exactly what you were to do in these cases?

(Testimony of R. M. Cobban.)

A. It had never been agreed upon that I was to purchase those claims.

Q. Had there been an express agreement made between you? A. There certainly had.

Q. Did you communicate that fact to your office?

A. I don't know whether I did or not.

Q. To Major Catlin or Mr. Pound or Mr. Dinsmore or anybody in your office?

A. I don't know whether I did or not.

Q. Well, if the agreement had been made, you knew from your knowledge of your business that the final proofs were to be made on the 24th, did you not?

A. I knew the time when their final proofs were to be made.

Q. If the agreement, then, had been made that the mortgage was to be drawn and so on, why was it that you did not communicate that fact to Mr. Pound or Major Catlin, so that there would not be any delay in the proceeding?

Mr. WALSH.—Have you got any testimony that he didn't?

A. I don't know anything about what I may have communicated to them in regard to those matters. I suppose I gave them all the information that was necessary.

Q. But the records show that on the day that the publication called for the final proofs to be made, which was on the 24th of November, 1899, nothing was done in

(Testimony of R. M. Cobban.)

the matter because of your absence from the city of Missoula, and that it was not until the day after that you came back and advanced this money. Now, explain that, please.

Mr. BICKFORD.—Now, we take issue with the gentleman, and insist that that is not proper cross-examination, because the record does not show that it was the day after that the witness came back or that anything was done on the day after the 24th of November, if that is the date, which would be on the 25th of November, and that the record in the case shows that it was some few days thereafter that final proof was made.

Mr. MAYNARD.—I say in answer to that, that I just simply read from the deed, that the indenture was made on the 25th of November, 1899, and the acknowledgment was made on the 25th of November in each of these cases, which is the same day that they final proofs were made.

Q. Now, I want you to explain the reason of that delay.

A. I don't know that it is necessary to explain that to you in any way, shape or manner. I don't see that it is pertinent to this case, what my instructions were to the office in regard to that. It was a transaction between Mr. Reeve and these people that I have mentioned, that I should make them a loan for their proofs, and if I failed to notify the office to make this loan to them, I don't see that it has any bearing on the case, and I

(Testimony of R. M. Cobban.)

don't know that I did fail to notify them; I don't know what the occasion of that delay was.

Q. You know as a matter of fact that there was a delay?

A. I believe there was in some of those cases, yes, sir.

Q. There was a delay in each of the cases.

A. Well, I don't know about that. That is what you say.

Q. Why couldn't you have had the same arrangement with Mr. Pound and Catlin in those cases and given them authority to execute the mortgage, just as you did in these other cases where they came to Helena and completed the transaction?

A. I cannot tell you.

Q. Now, then, on the next day, when you returned, the matter was closed up, was it not?

Mr. WALSH.—There is no evidence here that it was the next day, in fact, the evidence is that it was several days after the proof was made.

Mr. MAYNARD.—All right; put it several days, and we will pass along.

A. I think that when I returned to Missoula, I completed the loan as agreed upon and furnished the money to those people.

Q. In other words, that you sent the money over to the land office in the Reed case, without giving it to him?

(Testimony of R. M. Cobban.)

A. I don't know anything about the Reed case. Do you mean the Reeve case?

Q. Yes.

A. I don't know that I sent it to the land office; I don't think that I did; I may have sent it.

Q. If he says that he did not want to run the risk of losing it, and that he did not want to be bothered with it, and that you sent it over there and it was paid into the land office without his seeing it, was he mistaken in that testimony?

A. Why, I think perhaps he was right; I think probably he was.

Q. If he says, as a matter of fact, that it was paid in in that way, and that his word of mouth was the only security that he gave you, and that he gave you no note or mortgage or nothing, was that true?

A. He certainly would not give me a mortgage before he had the land.

Q. Or that he gave you no note?

A. I don't remember whether Mr. Reeve gave me a note or not, but I have no reason to doubt his statement, if he made such a statement, that he did not.

Q. If he gave you no note or anything of the kind in the nature of a note, why didn't you require it of him. You knew that he was utterly irresponsible pecuniarily?

A. Yes, that may be, but I had confidence in the man's integrity all the same, and that he would secure the loan as agreed upon.

(Testimony of R. M. Cobban.)

Q. And the same was true in all the other cases?

A. Yes, sir.

Q. Then he was to go right back to your office and fix it up by this mortgage?

A. He was, yes, sir; he was to secure the loan by a mortgage.

Q. As a matter of fact, he and his wife did go right back from the land office, and instead of giving you a mortgage, they executed a deed to you, the deed, a certified copy of which is in evidence in this case.

A. I don't know that they came right back to the office.

Q. If he says that he did, that they came back that same afternoon and deeded to you, was that true?

A. Why, I think very likely it was, yes, sir. I expected him to come in within a reasonable time after making his proof and carry out his agreement of securing the loan by the mortgage.

Q. But he did not do it?

A. Yes, he came back to do that.

Q. But he did not execute the mortgage?

A. No, sir, because I then made him an offer to purchase his claim, not only his but the others, and my offers to purchase were accepted.

Q. And how much did you pay Mr. Reeve for his profit over and above the expenses that you had been to in his behalf?

Mr. WALSH.—Do you mean what he paid for his land?

(Testimony of R. M. Cobban.)

Q. What you had paid for his land over and above what you paid into the land office for him and for expenses, at that time and place when he was in your office?

A. Well, I think that at that time, after settling with Mr. Reeve for the money borrowed, that there was paid to him somewhere from one hundred to one hundred and fifty dollars; I don't remember the exact amount.

Q. Have you no data?

A. I have no check, no, sir.

Q. Did you pay him in cash?

A. I must have done so.

Q. If he says that he received at that time as profit one hundred and ten dollars, was he mistaken?

A. I can't tell you whether that was the amount or not.

Q. And substantially the same amount that you paid Mr. Reeve, you paid his wife?

A. I think so.

Q. And that closed the transaction?

A. Yes, sir.

Q. Now, then, are you prepared in this case to swear that there had been no suggestion made by you to Mr. Reeve at any time prior to this day that he was to do just exactly what he did on that day?

A. There certainly was no agreement or no intimation in any way, shape or manner, direct or otherwise, that I would purchase that claim of him or from any

(Testimony of R. M. Cobban.)

of his people, and it was not until after he proved up that I made him any offer or talked about any purchase.

Q. But it was purely a loan? A. Yes, sir.

Q. And purely for the purpose of making the loan that you entered into the deal?

A. Yes, and for the profit that I would derive from it. There certainly was a profit in making the loan to me.

Q. Then your purpose in this class of cases was, not the expectancy on your part that you would get the land, but it was the hundred dollars that you would make in the loan that led you to do the work that you did in this case?

A. That was the main thing, yes, sir.

Q. How was that consistent with the declared purpose that you gave Mr. Davis of the First National Bank of Butte, that you were going down there and were engaging in the business of buying lands from these people?

A. It was just what I was doing. I was buying lands from people who had title, and I certainly had an expectation that some of these lands eventually would be offered for sale and I would be in a position, perhaps, to be a fortunate buyer. But that there was any agreement between these people and me that they would sell to me was absolutely out of the question.

Q. Then, really, wasn't it the back motive in the whole transaction that you were to advance this money

(Testimony of R. M. Cobban.)

to Mr. Reeve and to his wife and to the Starkeys and to the Ehles in order that you might be in a position to acquire those lands?

A. That might have been in my mind, but the loan was the proposition that I was working on.

Q. What was true in the case of Mr. and Mrs. Reeve was true in the case of Mr. Ehle and in the case of Mr. and Mrs. Starkey, was it not, that on that same day you received their deeds from them and did close up the transaction by paying them substantially one hundred or one hundred and twenty-five dollars as the case may be?

A. Well, that is my recollection; it was the same day that I bought of all those people.

Q. Now, the Starkeys say that you paid them by way of checks on the Western National Bank of Missoula. Was that true?

A. Then were mistaken in that.

Q. Did you pay them in cash?

A. I have not been able to find any checks nor any stubs of any checks.

Q. But you say that you have lost some of your checks? A. I have, yes, sir.

Q. But you don't know but what they told the truth when they said they were paid in checks on some bank in Missoula?

A. It is very likely that they might have been paid in checks on the First National Bank of Missoula.

(Testimony of R. M. Cobban.)

Q. But you have found no checks, nor no stubs?

A. No, sir.

Q. And your recollection is that it would range between one hundred and one hundred and twenty-five dollars that you paid them by way of profit?

A. Well, about that, from one hundred to one hundred and twenty-five or one hundred and fifty dollars, in that neighborhood over and above the money that was coming to me, I paid them for their deed.

Q. Have you any recollection, in your figuring up the amount of money that you had paid out in their behalf, of having advanced money to pay some expenses connected with the making of their entries?

A. It was all figured up, yes, sir, the whole thing; their indebtedness to me was figured up in each case.

Q. You have not got the slip, have you?

A. No, sir.

Q. In those cases, and in the cases where the slips came in from Griswold and Jemison and Kilburn and so on, they were to serve a temporary purpose and were destroyed after they were used, were they?

A. Those slips were not retained at all.

Q. So that you have no knowledge other than your recollection as to the items that entered into the expenses in these Reeve family cases?

A. No, sir, not exactly.

Q. So you are not prepared to say as to whether you had advanced them money previous to that time?

(Testimony of R. M. Cobban.)

A. No, sir.

Q. So that the only expenses that you would pay would be the ordinary expenses of the land office and paying for the publication of the notices and so on?

A. The expense that was charged up to them was the expense that I paid out, whatever that was.

Q. Now, you had in the meantime caused your estimates to be made on these entries, had you not?

A. Yes, sir.

Q. Mr. Hambly made them for you?

A. Yes, sir.

Q. And he had reported to you that in the case of Nellie J. Ehle, the timber would not warrant the purchase on your part?

A. He had told me the amount of timber on there.

Q. And when he informed you of that fact, you came to the conclusion that there was not enough timber to go on in the case as you had agreed?

A. It was not of sufficient value to make a loan of that size on.

Q. Whose error of judgment was that?

A. Well, I can't say.

Q. Well, be that as it may, you informed Mrs. Ehle that it was all off as far as she was concerned, did you not?

A. I informed her that I could not make the loan on that claim.

Q. You had made up your mind that you would not care to purchase at the figure that you would be ob-

(Testimony of R. M. Cobban.)

liged to in case it was possible for you to purchase from her, had you not?

A. I think I have stated that I did not care to make the loan on that piece of timber; there was not value enough there for it.

Q. Had you not also made up your mind that you would not care to buy?

A. I don't know that I had made up my mind as to that. I knew that the land was not worth the amount of money that she required as a loan.

Q. That is, that the land was not worth the Government price of two dollars and a half an acre and the hundred or hundred and twenty-five dollars that you would pay her, on the basis of paying her the same as you paid the others, that is what you mean?

A. No, sir, it is not; I did not make any such statement.

Q. Well, that is what you mean, isn't it?

A. No, sir, it is not.

Q. Where is the distinction?

A. I mean just what I said.

Q. Now, then, from that day, substantially the same steps were taken over again in Mrs. Ehle's case, except on another location which you informed her that she could have on the very day that you rejected the first, were they not?

A. No, sir, I don't think that is a statement of the facts at all.

Q. Well, you don't know as a matter of fact that a

(Testimony of R. M. Cobban.)

location was made by you or by someone in your employ for her, and that she afterwards did convey the land which is represented in Exhibit No. 131, which I show you—

Mr. WALSH.—There is no doubt in the world that she made an entry, and that the land was conveyed to Mr. Cobban; that appears in the record and is an established fact.

Mr. BICKFORD.—We object at this time that it is not proper cross-examination, and that the testimony, as shown by the record, is not as stated by counsel and as would be inferred from the questions that he asks the witness at this time.

Q. You admit that she made the entry and that your money paid for the land, and that she afterwards conveyed to you and that you paid her one hundred or one hundred and twenty-five dollars or thereabouts, don't you? A. No, sir, I do not.

Q. You admit that she made an entry?

A. Yes, sir.

Q. You admit that she deeded this land to you?

A. Yes, sir.

Q. You admit that that is not the true consideration expressed in the deed? A. Yes, sir.

Q. Don't you admit that, immediately after she returned from Helena after she had made the final proofs in the case, she conveyed to you?

A. I don't know.

(Testimony of R. M. Cobban.)

Q. If, as a matter of fact, the record shows that, you have no reason to doubt it, have you?

A. No, sir, I have not.

Q. And if, as a matter of fact, the testimony of Mrs. Ehle says that she received one hundred or one hundred and twenty-five dollars, whatever her testimony is, you have no reason to doubt that?

A. No, sir.

Q. Now, how do you account for the fact that all of those facts existed, and that she came back from Helena and went to your office and immediately conveyed to you and received this money, if there had not been a prior agrement that she should do that?

A. For the very reason, as I stated; I loaned Mrs. Ehle the money.

Mr. WALSH.—That has been explained about three hundred times.

A. (Continued.) And Mrs. Ehle came to my office in conformity with that agreement for the loan, that she would secure it by mortgage, and when Mrs. Ehle came to the office to secure the loan by mortgage I then made her an offer that I would pay her so much for the claim if she cared to sell it—it was not compulsory—there was no prior arrangement that she should convey in any way—but I simply made her an offer to purchase the claim and that offer was accepted and the deed was executed instead of a mortgage under those conditions.

(Testimony of R. M. Cobban.)

Q. And that was true in each and every case that is named in the bill of complaint, where it appears that the entries were made and the money paid and the final proofs made and the conveyances made substantially as in these Reeve and Ehle cases?

A. Well, there are a good many claims in the bill of complaint; I don't know that the conditions were the same; I don't think they were just the same in all of them.

Q. Can you now point out one or name one where there was any difference?

Mr. BICKFORD.—You need not mind bothering about that.

Mr. WALSH.—We object to that as not proper cross-examination.

The MASTER.—I think the witness is entitled to a question which is more definite.

Mr. MAYNARD.—I do that for the express purpose of trying to save time and facilitate the examination as rapidly as possible, and not going at great wearisome length, wearisome to my friends and to myself and everybody else—

Mr. WALSH.—It simply ask the witness to draw a conclusion, a comparison between this entry and some other entry. The facts as to each entry are here, and counsel can draw his own conclusions and make his

(Testimony of R. M. Cobban.)

own comparisions to the Court when he comes to argue the case.

Q. Do you know of any case, Mr. Cobban, where the facts are substantially as in this last case, or in the case of the Reeve family, where there was any arrangement made materially different than was made in that case; if so, I would like to have you point out the case, in order that I may have an inquiry in regard to it?

Mr. BICKFORD.—The same objection to this as to the former question, as it involves exactly the same proposition.

Mr. MAYNARD.—I desire to place myself right on the record in order that no Court can hereafter justly criticise me for going to so wearisome an extent into the details of each of these cases, when I am trying to avoid that. If that was so, we could pass the cases and confine ourselves to the investigation of those cases where Mr. Cobban says there was some difference.

Mr. BICKFORD.—It is very inconsistent for counsel, after having gone into each case, to make that proposition now to the witness, there remaining no cases that he has not already mentioned particularly.

Mr. WALSH.—We object to the question for the reason that it calls for no fact from the witness at all, but simply for a comparison and a contrast between the facts in this case as disclosed in the evidence with the facts in any other case disclosed in the evidence.

(Testimony of R. M. Cobban.)

Counsel has asked the witness the facts with reference to each individual case and the witness has told those facts. If they differ it is in the record, and it is not aided by the witness making any comparison between this case and any other case.

Mr. MAYNARD.—I would say to my esteemed and dear brother, Walsh, that there are fifteen to twenty cases or maybe more still remaining in the bill of complaint which I have not specifically and particularly called the attention of the witness to, and I ask him this general question for the purpose of avoiding, if possible, the wearisome examination as to the details of each of these cases.

Mr. WALSH.—If there is any other case concerning which the witness has not been interrogated that is substantially different from these, I have no objection to his answering the question, but as to making comparison between these and cases about which he has been interrogated, I object to his answering.

Mr. MAYNARD.—I think your point is well taken, as is usual when you are serious. I am not asking about those matters that he has already been asked about.

A. Well, there is considerable difference between different cases.

Q. Have you in mind any one?

A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Which one?

A. Well, there are a good many of them that there is a difference in, different arrangements entirely.

Q. I would regard it as a favor to myself, and I should think possibly a relief to you, if you would point out just who they were, so that I could be relieved from bothering you in regard to a lot of cases that are substantially the same?

A. Well, there was a good deal of difference between the Alfred Stewart purchase and the Nels Opsata purchase and a good many others that I cannot now recall. You are asking me to compare these with a great many different claims; I can't do that.

Q. Now, Mr. Cobban, you are acquainted with Mr. Jakways and Mr. Faust, who compose the firm of Jakways & Faust, at Ovando, Montana, are you not?

A. I am.

Q. You first became acquainted with Mr. Jakways of that firm by an introduction that was given to you through Mr. Griswold on or about June, 1899, were you not?

A. I don't know that Mr. Griswold introduced me: he may have done so.

Q. Do you remember the time and place to which I now call your attention, when you were up there with him?

A. I remember meeting Mr. Jakways in the spring of 1899, I should judge about June.

(Testimony of R. M. Cobban.)

Q. Where was that place of meeting, do you remember?

A. I don't remember whether I first met Mr. Jakways at his store in Ovando or at his ranch, but it was one or the other place.

Q. Later in the day, on that same day that you were out at the ranch, you were in the store at Ovando, were you not? A. I don't recollect.

Q. And then became acquainted with Mr. Faust?

A. I could not say whether it was the same day that I met Mr. Jakways first, that I met Mr. Faust or not.

Q. But you had no acquaintance with either of those men previous to June, 1899?

A. Not a direct acquaintance, no, sir.

Q. And you remember the fact that Mr. Griswold was up there at that time, do you not?

A. No, sir. I think perhaps he may have been there at that time.

Q. Do you remember Mr. Faust's testimony and Mr. Jakways' testimony to the effect that he met you and Mr. Griswold in the highway, and that he was introduced to you at that time and place, and that you went on then to the ranch, and afterwards went down from the ranch to the store?

A. I do not remember his testimony in that respect.

Q. If that testimony was given by Mr. Jakways, you have no reason to doubt the statement, have you?

(Testimony of R. M. Cobban.)

A. No, sir, though my impression was that I had met him either at the ranch or at the store first.

Q. Do you remember how you happened to be there at that time? A. Yes, sir.

Q. What was the occasion of your being there?

A. I was looking up timber lands and timber conditions generally as a matter of business.

Q. You were looking up to see if there was suitable timber in that part of the country that you could buy?

A. Yes, sir, I was looking up to see what timber land there was for sale, and looking over the general conditions, the conditions for logging and lumbering, getting a general idea of the lay of the country.

Q. And you so informed Jakways & Faust, did you not?

A. I think I informed them that I was looking after timber lands.

Q. And that you were in the market to buy?

A. I presume I did, though I don't know at that time whether I said anything to them about purchasing lands.

Q. Who recommended or advised you to go and see Jakways & Faust up at Ovando?

A. I don't think anyone advised me to go and see Jakways & Faust.

Q. How did you know that they would be proper persons to go to, to talk to in regard to this matter?

A. I didn't have to be advised by somebody as to who I could talk with about timber lands.

(Testimony of R. M. Cobban.)

Q. As a matter of fact, did not Mr. Griswold, who was then in your employ, say that that was a section of country where there was a large tract of good timber, and that he thought that that would be a good place to operate in, and that he told you of Jakways & Faust, merchants there, and advised you to go and see them; is that not true?

A. In a general way it might be true; I think very likely I talked with Mr. Griswold in regard to the timber in that country and the general conditions, but as to his advice to go to Jakways & Faust—I don't know that there was any particular advice. I went up there to look over the conditions, and my impression is that Mr. Griswold accompanied me, and yet I am not certain of that on the first trip. I knew of Jakways & Faust and had known of them for quite a long time as prominent, reliable business men.

Q. Did the meeting which you had with these men on that day, after you had told them the purpose for which you had come up into that country, result in your afterwards having more or less dealings with them?

A. Well, I can't say as to that. I did have considerable dealings with them for years afterwards, and have had up to the present time, and I presume that if I had not had an introduction and had not met them on that occasion, I very likely would not have done the business with them.

Q. So, from shortly after the introduction the deal-

(Testimony of R. M. Cobban.)

ings commenced between yourself and the firm, and, as I understand you, continues up to the present time?

A. Yes, sir.

Q. That was in June, 1899, more than three years ago now, now that you have had business dealings with them?

A. Yes, sir—well, about three years.

Q. Now, will you please tell me what the nature of the business dealings you had with them was from the time of the introduction up to the time of the close of the negotiations which are embraced in this lawsuit?

A. Well, there was the purchase of merchandise—

Q. That was the most important thing, was it; you start with that as the most important thing, do you?

A. Well, I am answering your question.

Mr. BICKFORD.—Let the witness answer the question.

The EXAMINER.—Yes, let the witness answer.

A. The purchase of merchandise and the purchase of timber lands through them or sometimes with their assistance, and I often called on them for services in other matters, that they have responded to.

Q. Well, now, particularize, and specifically state just what the business dealings were, as far as the timber purchases were concerned, what were they to do for you and what were you to do for them?

A. Well, there was no contract or no agreement that anything should be done. From time to time I

(Testimony of R. M. Cobban.)

made purchases either of them or through them, or sometimes I would give them instructions to make some offer for me, perhaps, for some land, or send them some money to make some purchase. There were a great many business transactions between us during those years, and each transaction was on its own basis and not the result of some preconceived agreement or contract.

Q. How were they to be paid for those services. You paid Mr. Griswold five cents a thousand and you paid these other men that worked for you doing this same kind of work a specific amount? Now, how were these young men up here in Ovando to be paid?

A. There was no agreement that they should be paid anything. As I explained a minute ago, every transaction that I had with them was a purely business transaction on its own basis, and they were not working for me unless under something special, when I would ask them to do something for me.

Q. Well, when you asked them to do something for you, were they to do that for nothing?

A. I never asked them to do anything without offering to pay them what was right for their services.

Q. Did you pay them?

A. I did; whenever there was any charge made for their services, I paid them.

Q. So that the difference is that, instead of entering into a general written contract or agreement with them by which they were to do whatever work you requested them to do over a certain range of time for

(Testimony of R. M. Cobban.)

which they were to receive a lump sum—instead of that, each transaction stood on its own basis and you settled with them in the pay for each case; that is the difference, is it?

A. Well, from your question I would take it that you mean to infer that there was an agreement with those people that they would do certain things for me. I have stated that there was no agreement, that they were not in my employ in any way, shape or manner, but from time to time, knowing them to be reputable business men, I called on them to do work for me as I do with many others throughout the country here.

Q. Now, do you remember what the first work was that you called upon them to do?

A. No, sir, I do not.

Q. Let me refresh your memory. Do you remember what the first tracts of land were that you bought through them?

A. Why, not for certain. I think it was the Cora Y. Faust claim, and the claim of Lewis S. Jakways.

Q. You have no recollection of anything prior to that time, have you? A. No, sir.

Q. Without going into details in regard to the matter, the result was that you obtained title to the Cora Y. Faust and the Lewis S. Jakways claims that had been taken up under the Stone and Timber Act?

A. I did.

Q. Then later on in the season there the May Haw-

(Testimony of R. M. Cobban.)

thorne claim and the Muchmore claims and the Doney claims and the Hoyt claims and the Nels O. Opsata and the Alfred Stewart claims that all eventually came into your possession, did they not?

A. Well, yes; those claims all came into my possession.

Q. And they were all negotiated in whole or in part through Jakways & Faust?

A. No, I can't say that exactly. Jakways & Faust may have had something to do with them all. You have been here and heard the testimony of these different people and of Jakways & Faust, have you not?

A. I have.

Q. Without going into great detail and rehearsing that testimony and reviewing it, the sum and substance of the whole matter is that they were more or less connected with you in the negotiation for the sale and purchase of those claims, were they not?

A. Some of them.

Q. Can you mention any that were not?

A. No; I cannot just now draw the line.

Q. Now, was this service that they rendered you paid for in a lump or in each specific case?

A. Well, please, ask your question—what do you mean; put it in shape so I know what you mean by service.

Q. Well, such service as they did render you.

A. Many things that they did for me—some little things there was no charge for in any way.

(Testimony of R. M. Cobban.)

Q. Well, Mr. Cobban, how much money would you say that during the year 1899, from the time you were introduced to them up to the close of the year, we will say, did you pay Jakways & Faust for such services as they rendered you during the year?

A. I don't know that I paid Jakways & Faust during the year 1899 one dollar for services, and yet I may have paid them quite a number. They very often rendered me valuable assistance without charging me one cent.

Q. Well, as a keen, bright business man, as it appears from this record that you are, how do you account for the fact that you now testify like some of these entrymen—

Mr. WALSH.—Never mind answering.

The MASTER.—No; you need not answer.

Q. In the point that you do not know whether you paid Jakways & Faust anything, and yet you may have paid them a good many dollars.

Mr. WALSH.—Don't answer that.

The EXAMINER.—You need not answer that question; there is a reflection contained in it on some of the witnesses which I will not permit.

Mr. MAYNARD.—I insist upon the question, but if the Examiner objects, I will waive solely out of deference to his objection.

Mr. BICKFORD.—I want to state that the Exam-

(Testimony of R. M. Cobban.)

iner has not objected, but that the Examiner has ruled upon the objection made by counsel for the defense.

Mr. MAYNARD.—I take an exception, and insist that legally I am entitled to the question.

Q. But I ask you this question: how is it that, as a business man, you are unable to answer my question as to how much money you paid those men?

A. Because there were a great many things that were done by Jakways & Faust for me in the last three years, and the dates of them I cannot now recall, but they cover three years' time. The main thing that I paid Jakways & Faust for their services was in posting notices on lieu land selections, sending out men for me at my direction for such services and covering the three years of time, and what number of those came in 1899, or whether any of them came in 1899 I am unable to say at this time.

Q. But during your dealings with them you have paid them a large amount of money for services, have you not?

A. No, sir; not a large amount of money for services; I have paid them a large amount of money, but I have not paid them a large amount of money for services.

Q. Now, let me ask you generally, Mr. Cobban, in these cases where it appears of record that the dealings were had, in the cases that I have mentioned, through Jakways & Faust, what were your instructions to them in regard to what they were to do for you in these particular entries that I have named to you that were made

(Testimony of R. M. Cobban.)

under the Stone and Timber Act, and where a conveyance was made to you.

Mr. BICKFORD.—Objected to as not proper cross-examination, and we insist that counsel should make specific reference to the different cases he has in mind.

A. Jakways & Faust had no general instructions or anything of the kind.

Q. Well, were they to find out where the claims were and report to you, and then the instructions would be made in the particular case? A. No, sir.

Q. What was the fact?

A. I told you there was no agreement between Jakways & Faust and myself.

Q. What were they to do then; you say they were to help you in these different land deals; what were they to do? A. I haven't so stated.

Q. Well, were they?

A. No, sir; not in a general sense, not in a broad sense in that way. I called on them sometimes for information or for some assistance in certain case, but they had no general instructions nor no general understanding or agreement between us that they would furnish me anything.

Q. How did they come to be connected with these cases where the record shows that the negotiations were had through them?

A. Well, that is a matter between themselves and other people that they were dealing for, I suppose.

(Testimony of R. M. Cobban.)

Q. And you had nothing whatever to do with them in regard to that?

A. Well, put your question a little more specific; it is a pretty broad question you are asking. I had nothing to do with any of the entrymen that Jakways & Faust made the loans for, if that is what you want to know.

Q. Yes, sir. You were entirely ignorant of all the facts and circumstances of those cases?

A. I don't know that I was wholly ignorant of some of the facts connected with some of those cases. I generally kept just as well informed of the timber conditions as it was possible to be in that section of the country, in the whole Blackfoot country, of every claim that was being filed upon, and generally was as well informed as I could be about that.

Q. You made that part of your business?

A. Certainly, that was part of my business.

Q. What steps did you take? A. In what?

Q. To keep posted. Did you take the "Garnet Mining News"? A. I did.

Q. And you examined particularly each one of the notices that were published there? A. Yes, sir.

Q. Did you receive information from Jakways & Faust of the different entries that were made?

A. Not particularly, no, sir.

Q. Wasn't it understood between you that they were to do so? A. No, sir.

Q. That they were to keep you posted and advise you

(Testimony of R. M. Cobban.)

from time to time as to the entries and the character of the entrymen and so on? A. No, sir.

Q. Didn't they do it? A. No, sir.

Q. In no case?

A. I may have known, possibly through them, of some of the entries; it is very likely I may have, but not in compliance with any agreement or any understanding that they were to inform me in any way. I visited Ovando two or three times during the season of 1899, and in every reasonable way tried to keep informed of the timber conditions in general.

Q. So do I understand you now as testifying, Mr. Cobban, after what you have already testified to, that any entries that are named in this case where the deals were closed up at Ovando, that that was purely a matter resting between Jakways & Faust on the one hand and the entryman on the other, and that you knew nothing about what was going on?

Mr. BICKFORD.—The witness has already testified that he kept himself fairly posted. I don't see why counsel should ask a question of that kind?

The EXAMINER.—Well, he can answer it.

A. Well, I have answered the question two or three times.

Q. There seems to be great doubt about it. Your counsel seems to think that it appears in the record that you kept thoroughly posted and so on. Do you mean that

(Testimony of R. M. Cobban.)

counsel is right, that you kept thoroughly posted about knowing about what was going on there or not?

A. I kept in a general way as well posted as I could about all the entries and when they were to be proved up on, and the amount of timber on the lands in that section, both Government and entered lands, lands that had been taken up recently and lands that had been held for years by patent, I tried to get that information and get the estimates on all of that class of land.

Q. Who did your estimating?

A. Mr. Hambly did the greater part of it.

Q. How long a time was he engaged up in that section of country, estimating?

A. Mr. Hambly was engaged in estimating from early in the season until the snow got too deep for him to do anything more in the winter, and then in the following spring he worked for me, too.

Q. Did he do the estimating and furnish you with the estimate in each of the cases where it appeared that the transaction was closed up in the Oyando district?

A. I think he did.

Q. He did that at your request? A. Yes, sir.

Q. Was that before or after the final proofs were made?

A. Mr. Hambly was estimating in there in the early part of the season, I think, and he was estimating all classes of land, as I stated. He was estimating, not only those timber and stone claims that had been filed upon, but he was estimating Government lands and lands that

(Testimony of R. M. Cobban.)

could be scripped and lands that had been proven up on before.

Q. So that in the general line of your business, keeping posted at the time of final proofs and so on, are you able to state as to whether or not you did have estimates in your possession of the quantity of timber on the claims that I have called your attention to, that finally came into your hands, that were located up in that district?

A. Yes, I think so.

Q. So you knew from the estimates that had been furnished you as to what you would be prepared to pay for them?

A. Certainly. I did not make a purchase of a piece of land up in that neighborhood without being pretty well informed as to the amount of timber on it. I may have made some purchases, even, without a careful estimate of it, but in a general way I knew what the amount of timber was. I have some knowledge of that myself by seeing a piece of timber land.

Q. You were having Mr. Hambly up there and paying him for doing this work during this entire season with the expectation that you would want to buy timber if it justified the purchase, did you not?

A. I was in the market to purchase timber lands, and I could not be in position to make a bid if the lands were offered for sale to me without knowing what amount of timber there was on those lands, and I naturally expected that later on many of these lands would be offered for sale. Not only that, but I was looking up lands for the purpose

(Testimony of R. M. Cobban.)

of scripping some, putting scrip on, and I made the estimates or had the estimates made as thorough as I could through a belt of country.

Q. And the same thing was true as far as what you were willing to pay on these stone and timber claims as in the section where Mr. Griswold and Mr. Jemison were operating, was it not; that is, the claims would be worth in the neighborhood of six hundred dollars; that was what you could afford to pay?

A. No, not necessarily that. The timber was very much better as a rule in the upper Blackfoot country, around Ovando; the claims were as a rule very much heavier and the timber was very much better, and it was in a district that I considered the timber more valuable.

Q. How much more valuable per claim?

A. Well, that depended on its location; some claims are very much more valuable than others.

Q. Well, you said that the average value of the claims in the districts to which I have now called your attention was in the neighborhood of six hundred dollars. Now, what do you say was the average value of the claims in the Ovando district?

A. Well, I am speaking generally; I could not tell you just what the average was, but they averaged better than they did on Belmont and Gold creek or in the lower Blackfoot country.

Q. Do I understand that you wish to be understood as saying here that you are unable to answer the question as to the average value of the claims?

(Testimony of R. M. Cobban.)

A. Certainly. I have not had a thought of it, and to give you a correct answer to your question it would necessitate my sitting down and making some calculations.

Q. Why haven't you got as much information on the value of the timber in the Ovando district as in the district in which Jemison and Griswold operated?

A. Well, it is easier to ask a question than it is to answer it. I have stated in a general way that the claims were more valuable there than they were on the lower river, and that is as near as I can come to it.

Q. Very well. Now, then, if you caused the estimates to be made and ascertained the value of the timber, and you also ascertained the fact of the time when the final proofs were to be made, and ascertaining these facts for the purpose of being in a position to purchase, what else did you do along that line?

A. Well, I can't tell you.

Q. Now, it is true that in the districts of the lower Blackfoot—we will say for the purpose of having it appear of record that the lower Blackfoot is where Jemison and Griswold were operating, and we will call it the lower and the upper Blackfoot—it is true that in the lower Blackfoot country you had to rely upon the representations that were made to you by others in regard to the character of a number of these people to whom you were making these loans, is it not?

A. Yes, sir.

Q. Now, isn't it true that in this upper Blackfoot

(Testimony of R. M. Cobban.)

country, a region remote from your home, that you had to rely upon somebody up there?

A. No, sir, it is not.

Q. Why isn't it true; you were doing the same class of business there as you were in the lower Blackfoot country, were you not? A. No, sir.

Q. Wherein was the distinction?

A. I was not making any loans to parties up there; I was not charging anything to people for finding locations; the conditions were quite different. In the upper Blackfoot country when a person had a claim to sell I bought it if we could agree on the price. There were no negotiations for loans or anything of that kind.

Q. Then, the entire mortgage element of the case is out of the case as far as the entries that were made under the Stone and Timber Act by men in the upper Blackfoot or Ovando district are concerned?

A. Yes, sir.

Q. You did buy the claims that I have called your attention to, did you not?

A. I bought quite a number of claims up there.

Q. Now, will you please explain to me the method on which you proceed in buying them?

A. Whenever I learned that the parties had title, I immediately proceeded, if the claim was a desirable one—one I thought of taking—to get in communication with the parties and make them an offer for their claims, and I purchased quite a good many.

(Testimony of R. M. Cobban.)

Q. How many did you purchase?

A. Well, I suppose I purchased perhaps a dozen or fifteen; I don't know just how many.

Q. Under the Stone and Timber Act?

A. Yes, sir.

Q. Now, where were you living at that time, in Missoula? A. Yes, sir.

Q. And how far is Ovando from Missoula?

A. Somewhere about sixty-five miles.

Q. And what is the nearest railroad station?

A. I think Bearmouth, or Drummond, rather.

Q. Well, from Missoula to Drummond we will say, and then how many miles would you have to go by stage?

A. I think the distance is about forty miles, I am not certain; thirty or forty miles.

Q. So that Ovando is thirty or forty miles away from any railroad, is it not?

A. Yes, sir.

Q. And the entire means of communication would be by stage, by letter carried by the stage?

Mr. BICKFORD.—I expect one can go on horseback or with a team or buggy or bicycle.

A. Except by private conveyance.

Mr. MAYNARD.—These gentlemen are getting awfully funny.

Mr. BICKFORD.—You might go in a balloon.

(Testimony of R. M. Cobban.)

Q. Under those conditions, you being in Missoula and the operations ranging out several miles from Ovando, how were you to acquire this information?

A. Well, there were many means of acquiring information.

Q. You have stated one which I can readily see, and that would be by the publication of the notices in the "Garnet Mining News." You say many; now, what is another one?

A. Well, I suppose the mails would be a very good way of getting information, and people traveling back and forth, and I made several trips myself into the Blackfoot country during that season and obtained information in that way.

Q. Didn't you want—and wasn't that the reason that you spoke to Jakways & Faust as reliable men up there, that they should give you this information?

A. No, sir.

Q. You never spoke to them about that?

A. I never made any arrangements with them to furnish me with any specified information; they were not my agents, to keep me informed.

Q. Well, whether you made arrangements with them to give you any specified notice, or whether they were not, as you term it, your agents, did you not through the mails, by letter from them, receive information in regard to these entrymen and entrywomen?

A. I may have had communications with them in regard to some of those entrymen.

(Testimony of R. M. Cobban.)

Q. You remember of writing to them, do you not?

A. I think very likely I did; I am very certain that I may have written to them in regard to it.

Q. Now, do you remember of leaving with Jakways & Faust, after your introduction to them in June, certain moneys and having dealings with them within the months immediately following, amounting to over five thousand dollars?

A. I had dealings with them covering several thousand dollars, yes, sir, in the months following.

Q. How did that happen?

A. Well, I purchased of them quite a number of claims, and I purchased other claims that the money passed through their hands.

Q. How many would you say that you directly purchased of them?

A. Well, I think I purchased three of them.

Q. Those were the first ones, weren't they, the Cora Faust and the Lewis S. Jakways claims and the Johnson claim? A. I think so.

Q. All the other cases where the money was paid were where the purchases were made through them, were they not?

A. Well, I am not quite certain. The transaction was made through them or with their knowledge.

Q. Explain to me how it happened that almost immediately after your introduction to them, these transactions which you now have testified to happened to take place; how did that occur?

(Testimony of R. M. Cobban.)

A. Well, very naturally. Mrs. Faust and Lewis S. Jakways had claims for sale, and they had the selling of the claim of Charles Johnson, and I negotiated with them for the purchase of those claims and did purchase them.

Q. And paid the money directly to them?

A. No, not the whole of the money directly to them; I think that some of those deeds were put in escrow in the Western Montana National Bank, and the money was partially paid to the Western Montana National Bank under the escrow agreements.

Q. There was no part of the five thousand dollars and over that I have called your attention to, that was used in the purchase of the Johnson and Faust and Jakways claims, was there?

A. Well, your question is very indefinite. The first moneys that were paid to them were on account of the purchase of those claims. There were other transactions fixed up during the season, I cannot now tell you just in what way.

Q. It appears from the ledger account, to which I will call your attention after dinner, that you were charged up there with over five thousand dollars. Now, what I ask you is whether any portion of that five thousand dollars which appears on that ledger, which is in evidence in this case—if any part of the same was used in the purchase of the three claims to which I have just called your attention?

(Testimony of R. M. Cobban.)

A. I cannot tell you, because I don't know the account; I don't know what the items are on that account.

Whereupon, a recess was taken until 2 P. M.

Tuesday, July 15th, 1902, at two o'clock P. M.

The hearing was resumed pursuant to recess.

The witness, R. M. COBBAN, thereupon resumed the stand for further cross-examination as follows:

(By Mr. MAYNARD.)

Q. I now call your attention, Mr. Cobban, to the dealings that you had with Jakways & Faust for the purchase by you of the three claims, to which your attention was called this forenoon. As I understand you those are the only three direct purchases that you made of them?

A. No, I don't think I said that.

Q. Well, what did you say?

A. I named those three as three direct purchases. The May Hawthorne claim was purchased through them?

Q. Through them? A. Yes, sir.

Q. In the same way?

By Mr. BICKFORD.—Well, we object to that because there is—there is no same way stated by the witness, and the question necessarily conveys no idea to the witness as to what is meant by the term "the same way."

(Testimony of R. M. Cobban.)

Q. What you said, Mr. Cobban, was that you made some purchases directly from them, and others you purchased through them. Now, what do you mean by that distinction?

A. Well, I can hardly tell in those cases. The case of May Hawthorne I don't know whether I bought directly from them or not. I purchased it through them, I suppose, although they attended to it.

Q. Well, what is the distinction in your own mind?

A. Well, I suppose, properly speaking, all of those claims were purchased through them, rather than of them. That is all I refer to. The Louis S. Jakways and Mrs. Cora Faust and the May Hawthorne claims.

Q. Well, how about the others that I called your attention to this forenoon. The Hoyts, the Muchmores, the Doneys and the Stewarts, and the Opsatas, and so on, how about those cases?

A. They had something to do with making offers for those in some instances. I am not certain that they did in all of them. Those were different propositions.

Q. Well, was that by chance that they did that, or by reason of an agreement which you had made with them that they should do this work for you?

A. No, not by reason of any agreement. There was no agreement between us.

Q. There never was?

A. No, sir, not that they should do that.

Q. On page a-30 of the record, Mr. Faust testified: "We were instructed to buy them if we could for the

(Testimony of R. M. Cobban.)

amount he, Cobban, was to pay." Were such instructions given?

A. In some instances there were instructions given them to make an offer of a certain amount for me.

Q. And how many of such instances were there that you can tell? A. I cannot say.

Q. Have you any particular recollection now of any particular case? A. Yes, sir.

Q. Name it? A. The Doney case.

Q. The Doney case? A. Yes, sir.

Q. What were the circumstances connected with the purchase by you of the Doney lands, and the timber growing upon the homestead?

A. Well, the—I gave them instructions that if those claims could be purchased, I think about the 10th of the month, the 8th or 10th of August, I sent them a check, and at the same time instructed them that if they could purchase those claims after they had proven up on them for a certain sum of money, that they should do so for me.

A. And you sent them a check for that purpose?

A. I sent them a check for one thousand dollars.

Q. And for what purpose was the check sent?

A. For the very reason—

Q. Not the reason, what was the purpose?

A. It was a loan to Jakways & Faust.

Q. A loan to Jakways & Faust? A. Yes, sir.

Q. How did you come to make that loan?

(Testimony of R. M. Cobban.)

A. Because Jakways & Faust had written me about the Doney homestead timber, and they had also written me that they had promised to make Mr. Doney a loan on his timber and stone claims; and they didn't know but what they would be short temporarily at that time, and they asked me if I would help them out if they needed it at that time, as a loan to them. And in compliance with that I sent them a thousand dollars, and told them that after Mr. Doney had proved up they could purchase those claims for me for a certain sum if he chose to sell.

Q. What was that sum?

A. It was about two thousand one hundred dollars.

Q. How are you able to fix that sum?

A. —for timber grown—and as that is my recollection of it, quite clearly.

By Mr. BICKFORD.—Go on and give the balance of your answer, Mr. Cobban, that you were interrupted in by the gentleman on the other side.

A. This for the timber growing upon his homestead claim. It was proven up on the 7th of August, I believe, and for the timber—for his own and his wife's timber and stone claim.

Q. Well, that is for the purchase of two claims that were entered by Mr. and Mrs. Doney under the Stone and Timber Act? A. Yes, sir.

Q. And for the purchase of the timber on the homestead of the Doneys? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. And you were willing to pay two thousand one hundred dollars for that? A. Yes, sir.

Q. Was there a full 160 acres in the Doney entries?

A. I don't recollect whether there was or not.

Q. Well, what were the elements that entered into the $2100.00? The money was to be advanced by the purchase, was not, and the two claims by the way of a loan?

A. I had nothing to do with any loan to Mr. Doney. I made Jakways & Faust a loan of a thousand dollars. That is, I sent it for that purpose, as they needed it, and with instructions to purchase those lands if they could after the final proof had been made.

Q. Why were you particular to say to them after final proof?

A. Because I had no right to purchase before, and I didn't intend to give any instructions at that time to make any offer before final proof was made.

Q. Didn't you know from the talk, the prior conversations that you had had, that they knew that law too, as well as you?

A. Why, I suppose they certainly knew the law, but I certainly wasn't giving them any instructions to violate the law.

Q. You say that you received this application for a loan from Jakways & Faust by letter?

A. I didn't receive it as an application for a loan, but as a statement of fact that they might be a little short of money at that time.

(Testimony of R. M. Cobban.)

Q. You don't know for what purpose they were going to use the money?

A. I suppose they were going to make a loan to Mr. Doney, as they had stated.

Q. So, just the first conversation that you had with them in regard to the Doney entries. This was the first conversation that you had, was it; the first that you knew about it in any way?

A. I may have known, and I think very likely I did know about the claims before that. I knew the amount of timber; knew the conditions, and I think I had an intimation before that about what the land would be worth on Mr. Doney's homestead, or rather the timber.

Q. Who did you receive that intimation from?

A. I don't know.

Q. Who had made the estimate of the timber on the entries that were made by Mr. and Mrs. Doney and conveyed to you?

A. I don't know whether Mr. Sparks had made the estimates or not. Mr. Hambly afterwards made the estimates of all of them, and I think that Mr. Hambly gave me the estimates.

Q. And how long a time was this before you received the application for a thousand dollars from Jakways & Faust? A. How long before the estimates?

Q. How long had the estimates been made by Mr. Sparks before you received them?

A. I don't know that they were made by Mr. Sparks at all.

(Testimony of R. M. Cobban.)

Q. Well, by Mr. Hambly?

A. Well, I couldn't say.

Q. Well, you knew all of these facts at the time you sent the thousand dollars, did you not? A. I did.

Q. Had you ever seen Mrs. Doney?

A. I think I had seen Mr. Doney.

Q. Where?

A. Well, I had seen him in Ovando, but whether I had had any conversation with him directly or not I am unable to say, but I had seen the man.

Q. During the same summer, the summer of 1899?

A. Yes, sir.

Q. And you may have had a conversation with him on this subject of the purchases? A. No, sir.

Q. You are sure you did not? A. Yes, sir.

Q. Well, did you know at that time that you saw him that he and his wife had made entries under the Stone and Timber Act?

A. I don't remember. I don't remember now whether they did or not.

Q. What is that?

A. I don't remember whether they had or not.

Q. Well, you were informed by Jakways & Faust of the fact of the entries, were you not?

A. Well, I don't know whether I was by Jakways & Faust or not. I certainly knew of the entries.

Q. Were they not embraced in that class of cases which were covered in the testimony of Mr. Faust when he said they were instructed to buy for the amount

(Testimony of R. M. Cobban.)

which he, (meaning you), wished to pay. Weren't these Doney claims under that general instruction?

A. No, sir.

Q. Do you desire to have it understood that that was a general instruction? A. Yes, sir.

Q. You don't so understand that, do you?

A. Yes, sir.

Q. In order that there may be no doubt about that I wish you to understand it thoroughly.

By Mr. WALSH.—You wish to have it understood that that was a general instruction, Mr. Maynard?

By Mr. MAYNARD.—I do, yes, sir.

By Mr. WALSH.—Do you so understand it?

By Mr. MAYNARD.—I do, and I would like to read you the testimony of Mr. Faust upon that subject if you are in doubt about it.

By Mr. WALSH.—You wouldn't be able to convince me of it, and so there is no use reading it.

Q. I read from the record—

By Mr. WALSH.—I object now to the stenographer taking down what you read. I don't care to have it in the record.

By Mr. MAYNARD.—Well, you deny that it is in the record.

By Mr. WALSH.—There is no question addressed to the witness.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—You deny that any such testimony was given by the witness, Faust, and I desire to convince you that you are mistaken, by reading the record.

By Mr. WALSH.—There is no occasion to read that. We are not disputing the testimony now.

A. I not only wish to say that there was no general instruction; that they were not working under any general instruction in any way, shape or manner, from me.

Q. He says on page a-30: "A. Whatever he bought through us, yes, sir. Q And what was that agreement? A. Why, there was no particular arrangement, any more than we were instructed in case we found timber lands, to buy them for the amount he wished to pay if we could."

Now, I want to know if the Doney cases come under that instruction?

A. I think I have stated before that there was no general instruction; but in the Doney cases, they did have instructions to purchase, but they did not have any general instructions.

Q. Why did you give them instructions to purchase in the Doney cases?

A. Because they had no general instructions, and I wanted to purchase the Doney claims if I could get them at the figure I wanted them.

Q. When did you make up your mind to purchase them?

A. During that season. During the season of 1899.

(Testimony of R. M. Cobban.)

Q. Before or after they had filed?

A. After they had filed.

Q. How long after they had filed?

A. I cannot tell you.

Q. Can you state the special circumstances which led up to the conclusion that you wanted to buy these particular claims?

A. Why, I don't think it is necessary to do that. I was convinced that the timber was worth the amount that I wanted to pay for it and I made the offer.

Q. Had you made a personal inspection of the timber? A. No, sir.

Q. And you had had no personal conversation with them? A. With whom do you mean?

Q. Jakways & Faust—no, I mean the Doneys.

A. As stated before, I don't know that I had ever talked with Mr. Doney before the final proof was made.

Q. Very well, if you had never made a personal inspection of the land, and had had no conversation with the owner, or with the entryman, how did you get the data that led you to the conclusion that you wanted to buy that timber?

A. I had men employed for that purpose—for the purpose of informing me. My estimators were for that very purpose, and while I may not have had a personal knowledge of that timber, I knew a great deal about the timber in that locality.

Q. Well, while you might know generally that there were fine timber lands in the Ovando district, would that

(Testimony of R. M. Cobban.)

enable you to have any specific knowledge as to the Doney holdings?

A. Yes, from my reports, the reports that I had on it.

Q. From whom did you receive your knowledge?

A. Well, I cannot say for certain, but from the parties who made the estimates; and I may have heard in other ways.

Q. Are you prepared to say that you didn't hear, as one of the sources of your information from Jakways & Faust?

A. Why, I certainly may have heard from them, and it is very likely that I had heard from Jakways & Faust, and from other sources.

Q. From Doney, do you think?

A. I have no doubt but what I did. I talked with them a great deal about that country, Jakways & Faust; those people had lived there for years, and were perfectly familiar with the country around there, and I asked them a great many questions, asked them for a great deal of information.

Q. Wasn't it for that very reason that they had lived in that country for so many years, and were so familiar with the details of the land situation there, and of the condition of the inhabitants up there that you had entered into the negotiations that you say you did?

A. No, sir, but they were very reliable gentlemen, and familiar with every condition, and they had the largest store in that country, and the postoffice, and it

(Testimony of R. M. Cobban.)

would be a very natural thing to go to them for information.

Q. Certainly that is what I thought, and that is the reason why you did go to them for information.

A. I presume so, not only from Jakways & Faust, but I got information from a great many people in that country in regard to the conditions of the country, etc.

Q. So that it was after you had determined that you you wanted to buy these Doney entries, and the timber on the homestead, that you carried on these negotiations with Jakways & Faust? A. Yes, sir.

Q. And you say that you sent them a check for a thousand dollars? A. Yes, sir.

Q. Did you send them any more to apply on the Doney purchase, either before that time or after?

A. Yes, sir.

Q. How much more?

A. The full amount of the purchase price, which was something like $2,100.00.

Q. You sent it all to them?

A. I either sent it all to them, or paid it into the bank—the Western National Bank of Missoula, to their credit.

Q. Was that the first deposit that you made in that bank to the credit of Jakways & Faust?

A. I am unable to say.

Q. Do you remember when that deposit was made?

A. No, sir. I paid into the bank there two or three times, money to their credit after that time.

(Testimony of R. M. Cobban.)

Q. Was that the limit, two or three times?

A. I should think about that number of times.

Q. Who did you see in the bank relative to that transaction? A. The bank officials.

Q. What is the name of the bank?

A. It was the Western Montana National Bank.

Q. Who was president of that bank at that time?

A. Mr. Ryman, I think.

Q. Ryman? A. Yes, sir.

Q. Is he the president now?

A. I don't remember whether he is president or cashier, or what he is.

Q. And you saw him in regard to it?

A. I am not certain whether I saw Mr. Ryman, or some other officer there. I had transactions with Mr. Ryman, numerous times during that season, and naturally sometimes, with Mr. Wolff.

Q. Who is Mr. Wolff?

A. He is the assistant cashier.

Q. Is he there now?

A. Yes, sir—either the cashier, or assistant cashier.

Q. Now when you first went to that bank there, and opened an account to the credit of Jakways & Faust, please tell us what you did there, and what you wanted to do?

A. I opened up no account with Jakways & Faust.

Q. Well, just tell us what you did.

A. If I paid money in there, it was on some deeds that were in escrow, or in one instance, I don't think

(Testimony of R. M. Cobban.)

there was any escrow there, but there was quite a balance that was due Jakways & Faust, that I had paid into the bank there, for them, instead of sending it to them at Ovando, by their request. I had paid it into the bank.

Q. Didn't you say a moment ago that you deposited a certain amount to their credit?

A. That is what I meant by depositing to their credit.

Q. Just tell what you did with reference to that matter. It is a new matter. Just tell us what you did when you went into the bank, and what you did in the bank relative to the Jakways & Faust matter.

A. I simply deposited money to their credit. I think that some of those deeds—I am quite certain that the Cora Y. Faust deed was in escrow there at that time. There were at least some deeds that were in escrow.

Q. Well, do I understand that during that summer of 1899, you went to the bank and stated that you desired to have certain arrangements made there by which Jakways & Faust's drafts or checks upon the bank could be honored?

A. No, sir, there was no such arrangement.

Q. Well, what was the arrangement?

A. It was simply a business transaction, and instead of sending a check to Jakways & Faust, a check was deposited to their credit, in the Western Montana National Bank, for some given transaction; and in some instances the deed had been sent down to the Western Montana National Bank. I think that the Johnson $500.00 check

(Testimony of R. M. Cobban.)

was given in that way. And I think the balance was put into the bank with the escrow.

Q. Do you understand that they had executed their deed? A. Certainly.

Q. And you deposited your checks and drafts or other forms of negotiable paper, and deposited them in the bank with the instruction that it should be credited up to their account. Is that what you wish to be understood as saying?

By Mr. WALSH.—We object to that because it is not proper cross-examination, there being nothing in the record upon which counsel could base such a question as that; no testimony having been given here that he deposited checks, drafts and other negotiable instruments, in the language of counsel, to the credit of Jakways & Faust. The part of the question which contains the reference to checks and drafts and other negotiable instruments being purely an invention upon the part of counsel for the Government and wholly unwarranted by the testimony in the case.

Q. Answer the question, please, Mr. Cobban.

A. If a deed was in escrow in their bank, the instructions were written plainly on there to deliver the papers to me on the payment into the bank of a certain sum to their credit. That money would be paid to the Western Montana National Bank. What would be done with that check, I suppose, would be that it would be sent to Jakways & Faust, or placed to their credit, according to the instructions on the envelope. I think in one or two

(Testimony of R. M. Cobban.)

instances I paid money into the bank to their credit, under their instructions, when there was not a deed in escrow, but when I was owing them money.

Q. Now, then, there were two forms of dealings that went through the bank? A. Yes, sir.

Q. And were there any other forms?

A. No, sir.

Q. And the deed was sent there to the bank for delivery to you upon the payment of the money?

A. Yes, sir.

Q. And one of those forms was where the deed was sent there for delivery to you on the payment of the money? A. Yes, sir.

Q. And the other was where you were owing them and you deposited the money to their credit?

A. Yes, sir.

Q. Now, how many times did you say that you were owing them money?

A. Oh, probably two or three times.

Q. And no more?

A. I am unable to say. I think probably about two or three times.

Q. And during what period?

A. During the season of 1899.

Q. Terminating the 31st day of December, 1899?

A. Yes, sir.

Q. And how about the year 1900?

A. I don't think there were any transactions of that

(Testimony of R. M. Cobban.)

kind except probably during the year 1899. There might possibly have been as early as January, 1900.

Q. Have you any recollection as to the early months of that season of 1900, of having made a deposit of money to the credit of Jakways & Faust?

A. No, sir, I have not.

Q. You have no recollection as to the amount?

A. No, sir, I cannot tell you.

Q. Can you approximate it in any way, with any degree of safety?

A. No, I presume probably there was five thousand dollars; might have been more, or might have been less.

Q. Might have been more or less; might have been ten thousand dollars?

A. No, sir, I don't think that it was possible.

Q. Well, are you prepared to swear that it was not ten thousand dollars? A. No, sir, I am not.

Q. Well, it might have been fifteen thousand dollars?

A. No, sir, it was not.

Q. You place the limit at fifteen thousand dollars, do you?

A. Well, I know it wasn't fifteen thousand dollars.

Q. Well, how much was it less than fifteen thousand dollars?

A. Well, I am not going to guess at this any more. I have guessed all I could, and I am not going to guess any more.

Q. I don't want any guesswork; I wish to know.

(Testimony of R. M. Cobban.)

whether you are prepared to swear whether it was fifteen thousand dollars or not.

By Mr. BICKFORD.—And he has already answered the question; he said no. We object to it as a repetition and not proper cross-examination.

A. I said it was not.

Q. That is what I said, and you said no, and I asked you how much less you were prepared to say was the extreme limit.

By Mr. BICKFORD.—He has answered that question already and we object to the question being propounded to the witness again.

Q. And it might have been twelve thousand dollars?

A. I think I said that I didn't think it was ten thousand dollars. I think it was five thousand dollars.

Q. Well, we will find out from the books. Well, what was that money, five, ten or twelve thousand dollars that you say you were indebted to them; what was it for?

By Mr. WALSH.—We submit that he has not stated that he deposited ten or twelve thousand dollars; that the witness under cross-examination said that the total transaction amounted to about five thousand dollars, and we submit that it is not a fair cross-examination of the witness.

By Mr. MAYNARD.—What is the use of your saying such a thing as that? You cannot lead the witness.

By Mr. WALSH.—The record speaks for itself, and

(Testimony of R. M. Cobban.)

will bear me out in the matter that the witness has been asked the question and has answered it fully.

By Mr. MAYNARD.—I am trying, as well as I can, to prevent you from trying to lead the witness. Now, if the facts do not warrant the cross-examination, it don't amount to anything.

By Mr. WALSH.—I am fully aware of that that the examination don't amount to anything.

By Mr. BICKFORD.—Now, we want to add that he has not said that he was indebted five, ten or twelve thousand dollars, and that the counsel is endeavoring to get the witness to state the facts differently from what he has testified to.

A. Well, at different times there were different transactions with them, as I have stated before; and I think I told you a moment ago that the Johnson deed—for the claim which he located, was one of the transactions in the bank, and I believe that Cora Y. Faust was another. I believe that her deed was placed in escrow for a portion of the purchase price.

Q. Let me aid you. If you are unable to state particularly how that indebtedness was created, wasn't it created in this way; that it was for the payment for lands which you had instructed them to buy for you, and that you deposited the money in the bank, for the purpose of enabling them to have the money with which to make the payment?

A. Yes, sir. I think that the greater part of the

(Testimony of R. M. Cobban.)

money that I paid them was for the purchase of lands, directly under my instructions.

Q. Well, if it was purely under your instructions, I ask you again whether the work that they did was a purely voluntary act upon their part?

A. Yes, sir, they acted for me under my instructions in the purchasing of those claims, and there was not a cent, to my recollection paid them for a commission, or anything of the kind, where there was a special—where they put themselves out. Probably there might have been some little charge for some service, but other than that there was none.

Q. Very well, didn't you further, as another source by which they could obtain money to pay for the lands, which you instructed them to buy; didn't you send the money direct to them in currency? A. No, sir.

Q. You never did?

A. I may have at some time, paid them some money in currency, but I think very little, if any.

Q. So that the only source from which they had the money to pay for the land was the money that you deposited in the bank of Missoula?

A. I have not so stated.

Q. Well, what other sources were there if you didn't send the money to them?

A. I sent them checks several times.

Q. Drawn on the same bank?

A. Drawn on the First National Bank of Missoula.

(Testimony of R. M. Cobban.)

I had no account with the Western Montana National Bank.

Q. And did not have at that time or any time?

A. No, sir.

Q. But in the First National Bank of Missoula?

A. Yes, that is the bank that I was doing business with at that time.

Q. How much was the amount of the checks that you sent to Jakways & Faust for that purpose?

A. Well, I don't know; I haven't figured it out, but perhaps five or six thousand dollars.

Q. Have you those checks?

A. I have some of them.

Q. Haven't you all of them?

A. I don't know whether I have all of them or not.

Q. If you haven't all of them, where have they gone to?

A. I haven't them; they have been lost or mislaid somewhere, I don't know just which. I have all that I could find among my papers.

Q. Have you made an examination of your papers for them recently? A. Yes, sir.

Q. Have you got them with you?

A. I have some of them, yes, sir.

Q. Will you let me see them, please?

A. Yes, sir. (Witness hands counsel papers.)

Q. You hand me eight checks?

A. I think that is all of the checks that I have here, drawn on them—drawn in their favor.

Q. You stated the other day the reason why, as an

(Testimony of R. M. Cobban.)

accurate business man, you had possibly checks and other papers belonging to you, owing to the fact that you have had to move three times within recent years, I believe you said?

By Mr. BICKFORD.—We object to that because the witness didn't state that he did this as an accurate business man, and further it isn't proper cross-examination; and it is assuming a fact that has not been testified to by the witness, and it shows the effort of the gentleman to pervert things and to state things that never have happened.

A. I will say this: I have carted these papers around for nearly a year from Missoula to Helena, and from Helena back to Missoula, and they sometimes were at home, and sometimes in my office and sometimes they would be left in Butte for weeks at a time, and they may have been lost at some of those times, or they may have been lost at the office, before ever starting on these trips. I don't know which.

Q. So that it is possible that these checks that you offered in evidence from time to time, as evidence of a certain transaction really give us a small introduction to the whole amount of the transaction?

A. I don't know but what the checks that are in this bunch here represent the whole transaction. I haven't looked at them carefully. That is, the checks that were given to Jakways & Faust. I haven't looked them over carefully to see. If you will give me a little time I will

(Testimony of R. M. Cobban.)

look over my stubs to see if there are any other checks that I have not got here.

Q. Have you any checks of any kind in which you would accurately set forth the dealings that you had with Messrs. Jakways & Faust, other than your stubs of the check book? A. I don't know that I have.

Q. Well, we will take what we have got here.

By Mr. BICKFORD.—You don't want them to offer as exhibits, do you?

By Mr. MAYNARD.—No, I don't care about that so long as we get them into the record.

By Mr. BICKFORD.—You can put them into the record; but we want to keep them here, because some other gentleman representing the Government may want to see them.

The checks referred to were thereupon read by counsel for the Government and are as follows:

$64.35/100. Missoula, Mont., July 17, 1899.

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to Jakways & Faust, or order, sixty-four and thirty-five/100.

R. M. COBBAN.

(Revenue stamp.)

Endorsed: Paid Western Montana National Bank, Missoula, Mont., Order of Jakway & Faust. With the stamp of the bank which is First National Bank of Missoula, Montana. Paid July 20th, 1899.

(Testimony of R. M. Cobban.)

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, one thousand dollars ($1,000.00). Missoula, Montana, August 8th, 1899.

(Signed) R. M. COBBAN.

Endorsed: Paid Western Montana National Bank, Missoula, Mont. To the order of Jakways & Faust, Ovando, Montana. The stamp of the bank is, First National Bank of Montana. Paid August 11th, 1899, Missoula, Montana.

The next is:

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, one thousand and twenty-five and no/100 dollars ($1025.00). Missoula, Montana, August 8th, 1899.

(Signed) R. M. COBBAN.

Endorsed: Pay Western Montana National Bank, to the order of Jakways & Faust, with stamp on the upper corner, dated August 11th, 1899.

The next is:

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, three hundred dollars ($300.00), Missoula, Montana, August 9th, 1899.

(Signed) R. M. COBBAN.

(Testimony of R. M. Cobban.)

Endorsed: Pay Western Montana National Bank, Missoula, Montana, order of Jakways & Faust, Ovando, Montana. With the stamp of the bank, paid August 14th.

The next is:

No. 349. Missoula, Montana, 5/1/1900.

FIRST NATIONAL BANK OF MISSOULA.

Pay to the order of Jakways & Faust, five hundred and no/100 dollars ($500.00).

(Signed) COBBAN & DINSMORE,
By A. E. P.

Endorsed: Jakways & Faust.

The next is:

August 12, 1899.

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, twenty-five and no/100 dollars ($25.00). Missoula, Montana, August 12th, 1899.

(Signed) R. M. COBBAN.

Endorsed by the Western Montana National Bank, Missoula, Montana. Pay to the order of Jakways & Faust, Ovando, Montana; with the stamp of the bank paid August 19th.

(Testimony of R. M. Cobban.)

The next is:

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, five hundred and no/100 dollars ($500.00). Dated Missoula, Montana, August 17th, 1899.

(Signed) R. M. COBBAN.

Endorsed: Pay to the order of Charles E. Johnson, Jakways & Faust. Endorsed: with the stamp of the bank, Charles E. Johnson. Paid August 24th, 1899.

The next is:

THE FIRST NATIONAL BANK OF MISSOULA, MONTANA.

Pay to the order of Jakways & Faust, three hundred and no/100 dollars ($300.00). Dated Missoula, Montana, November 30th, 1899.

R. M. COBBAN.

Endorsed: Pay Western Montana National Bank, Missoula, Montana, order of Jakways & Faust, Ovando, Montana. With the stamp of the bank showing that it was paid.

Q. This represents three thousand one hundred and sixty-four and some cents as I have roughly added it up in my mind, casting the figures up. Now, then, as I understand you to say, you have no recollection of sending any currency there? A. No, sir.

Q. And when you did send money, it was always in the form of checks on the First National Bank.

(Testimony of R. M. Cobban.)

A. I didn't so state.

Q. Well, what did you state?

A. I said it was generally so, and I believe it was so. But I may have paid them some sums in cash, but not large sums.

Q. We deal in such large figures out in this Western country, and when you say, "No large amount," it doesn't convey much of an impression to me. Now, what I want to know is something more definite. What do you mean by that?

A. Well, I mean that sometimes there may have been two hundred or three hundred dollars paid to them in cash. But I have no recollection of anything of the kind having been done, and it would be an uncommon transaction to carry that amount of money in that country.

Q. You mean an uncommon transaction?

A. It would be an uncommon thing, yes.

Q. How would it get there?

A. Their business was nearly all transacted by checks and they would simply draw a check on a deposit in the Western Montana National Bank, or some bank that they were doing business with, and they would give the checks for the goods that they bought on such banks. There would be no necessity of handling much money in that way.

Q. I am asking about your own dealings with them.

A. Well, is there a question?

(Testimony of R. M. Cobban.)

Q. I was asking about your own dealings, how you would take the money over to them?

A. I have stated, sent them checks, or deposited in the Western Montana National Bank.

Q. One of those two ways? A. Yes, sir.

Q. And you have no recollection at any time of going there in person and giving them the currency?

A. No, sir.

Q. Or sending the money by express, so that they would have the currency to deal with?

A. No, sir.

Q. And you are prepared to say that that wouldn't be done by you, or by anyone acting under your instructions?

A. Well, I will say that it wasn't done to any extent. I don't think I ever sent any by express. I may have given them some small sum in cash sometime, but it would be a small amount if I did.

Q. Very well, now, then, I show you the Complainant's Exhibits Nos. 121, 122 and 123, being the Doney conveyances to you. What was the real consideration for those deeds, if you know? There is in exhibit No. 123, one of the deeds, a thousand dollars, and in exhibit No. 122, a thousand dollars, and in exhibit No. 121, fifteen hundred dollars. It would be thirty-five hundred dollars, the aggregate of the considerations in the three deeds.

A. Well, I think it was twenty-one or twenty-two hundred dollars. Somewhere in that neighborhood.

(Testimony of R. M. Cobban.)

Q. Twenty-one or twenty-two hundred dollars?

By Mr. BICKFORD.—You mean for the whole of the deeds?

By the WITNESS.—I mean for the whole of them, yes, sir.

Q. Can you state as to whether or not they were full descriptions or not?

A. I couldn't tell you.

Q. You say you think it was twenty-one hundred or twenty-two hundred, the sum that you named?

A. Twenty-one or twenty-two hundred dollars, yes, sir.

Q. What makes you think so?

A. Because that is my recollection of the transaction.

Q. Well, do you have any knowledge about it other than what Jakways & Faust told you?

A. Well, I certainly had knowledge of it. I bought the claims, and knew what I paid for them at the time.

Q. Well, have you any deeds in which it enables you to tell specifically what you did pay for them.

A. I don't know that I have.

Q. Do you know who you paid this money to?

A. No, sir, I cannot tell you. There was a thousand dollars that I sent them at the time, that I testified to, on August eight, that was applied on the purchase of those claims; I don't know just when I did send the rest.

(Testimony of R. M. Cobban.)

Q. Ten hundred and twenty-five dollars on August the 8th. The check which I read into the record, was that sent for that purpose?

A. I think not. I think that was a thousand dollar check.

Q. I show you the check for one thousand dollars, of date August the 8th, which was endorsed, a general endorsement, by Jakways & Faust, is that the check?

A. That is the check that was sent to Jakways & Faust as a loan to them of the amount for the purchase which was made, to be applied on that purchase price.

Q. When did you first know that you were to loan this money?

A. When they wrote to me in regard to it.

Q. Have you their letter?

A. No, sir, I have not.

Q. Have you made any search for the letter?

A. I have made a search for letters in different cases, for different parties, and I haven't found any letters bearing on it.

Q. Had you ever made a loan to them before?

A. No, sir, I think not.

Q. You made a number afterwards, did you not?

A. No, sir.

Q. What is that? A. No, sir.

Q. Never did before or after? A. I think not.

Q. How did they come to write you to send them a thousand dollars?

(Testimony of R. M. Cobban.)

A. Well, I was buying timber lands, and they were --they knew Mr. Doney at that time had timber to sell, that is, timber on his homestead. I don't know that he had ever offered it for sale, but he had stated that it was worth a dollar a thousand. I don't think that he had offered it for sale, but I knew that that land was likely to be for sale. Jakways & Faust wrote me that they had promised to make a loan to Mr. Doney, and probably might be short of money at that time, and wanted to know if I could help them out; that is, if I could loan them some money; and I did, and at the same time, I gave them instructions that if they could buy Mr. Doney's land, after he had proven up, to make him an offer of so much.

Q. And the loan then was made by you to them for the purpose of buying the land for you?

A. It was not made—it was made by me to Jakways & Faust, absolutely as a loan.

Q. And with the instructions that if they could buy the land for you at such a price, to do it?

A. Yes, sir, if they had title—if those parties had their titles to the lands, and Jakways & Faust could buy them for so much money; they were instructed to do so.

Q. Is it not true, then, as a matter of fact, that you sent them this money for the express purpose of buying the Doney lands? A. No, sir, it is not.

(Testimony of R. M. Cobban.)

Q. Why should they want to borrow money from you to buy land from Doney to sell it to you again?

A. They were having dealings with Mr. Doney right along. Mr. Doney had been one of their customers, and it had been their custom for years, as I understood it, for him to have an account with them, and they had been in the habit of loaning money to these people for years, and carrying them from time to time for things that they wanted. And they knew that I was in the market to buy timber, and they had promised Mr. Doney to make this loan; and it caught them at a time when they were perhaps a little close run, and they so notified me, and asked me if I could let them have that amount of money—for the time being. They didn't state it that way, but said that they might be a little short, and wanted me to let them have the money.

Q. You sent them this check for a thousand dollars, then, on the information that they gave you, and asking you for a loan to them, they stating voluntarily that they would require it? A. Yes, sir.

Q. And this was done by them simply as a favor between them and their customers?

A. I suppose it was, yes, sir.

Q. Did you know of the fact, that as a matter of fact, Mr. Doney had no money whatever?

A. No, sir.

Q. —to make the purchase of these lands for himself and wife? A. I did not.

(Testimony of R. M. Cobban.)

Q. Or that he borrowed money from Jakways & Faust to pay his expenses to Helena?

A. I learned that from the evidence given here in the case, yes, sir.

Q. Don't you recollect further from the evidence in the case, and from the records in the case, that as a matter of fact, he did not receive any money whatever from them, so far as the purchase price was concerned, but that the money was paid directly into the land office?

A. I don't remember of the exact circumstances in that case.

Q. And that all the expenses were paid?

By Mr. WALSH.—We object to this witness being cross-examined as to what he knows about this record for the reason that that is not proper cross-examination.

Q. Well, do you know, as a matter of fact, Mr. Cobban, how much money Mr. Doney received as profit for the transaction?

A. Why, I certainly do not.

Q. How much do you figure that there would be profit for him upon the basis of the $2,100.00 that you were to pay?

A. I didn't figure on any basis of profit for him.

Q. You did not?

A. No, sir. I figured that the lands were worth so much to me, and I made an offer on that basis.

(Testimony of R. M. Cobban.)

Q. Well, you knew how much money would have to be paid into the land office, didn't you?

A. Yes; but I had nothing to do with that in any way, shape or manner. It was none of my business.

Q. And you have no knowledge—and you cannot give me any information as to how this $2,100.00 was made up other than this check for a thousand dollars?

A. Not at the present time, no, sir.

Q. Now, isn't it true that the thousand dollars was substantially all the money that passed in any way for that Doney deed? A. No, sir, it was not.

Q. That the thousand dollars substantially was required for the payment of the two entries, and paying the expenses? A. No, sir.

Q. Well, you knew, as a matter of fact, that a thousand dollars was substantially paid—taken for the two entries, and to pay for the expenses, did you not?

A. Why, I know that if the two claims were full claims, it would take in the neighborhood of that amount to pay for the claims and the proving up. But I had nothing to do with that in any way.

Q. Well, tell me why you would be willing to pay five hundred dollars apiece for the two entries, with the timber that was on the homestead, when as a matter of fact you paid only—you had only been paying from a hundred to a hundred and fifty dollars each in the other cases?

A. As I explained to you this morning, the timber lands were as a rule a little more valuable in this section

(Testimony of R. M. Cobban.)

of the country than they were in the Blackfoot; and I figured that those lands were worth what I made the offer for in the neighborhood of twenty-one hundred dollars.

Q. Well, did you figure that when you had no personal knowledge of the amount of the timber, except as you had gotten it from—by reports from the estimators?

A. Certainly.

Q. Well, now then, if Mr. Doney swears that he was willing to sell his claim, and his wife's claim, and the timber on his homestead for twelve hundred dollars, and he did sell it for twelve hundred dollars; now was he mistaken when he said that he received twelve hundred dollars, or are you mistaken when you say you paid between twenty-one and twenty-two hundred dollars for it?

A. Well, I don't know what Mr. Doney received for his claim, but I am quite certain that I paid about the same as I have stated for those claims. I paid the sum that I stated.

Q. Well now, Mr. Cobban, when you say that you are quite certain, doesn't that imply that you are not certain as to how much you did pay?

A. I knew that I paid more than twelve hundred dollars. I know that I paid in the neighborhood of twenty-one or twenty-two hundred dollars for that claim.

Q. But you have no recollection or knowledge as to when this money was paid, or to whom it was paid, or anything about it, except this check for twenty-one hundred dollars?

(Testimony of R. M. Cobban.)

A. That is all I can recollect of the transaction.

Q. And who did you pay it to?

A. Jakways & Faust.

Q. Have you—if you paid it to Jakways & Faust, and Mr. Doney isn't mistaken when he swears that he received twelve hundred dollars, Jakways & Faust owe you eight hundred dollars on that deal, don't they?

Mr. WALSH.—We object to that as not being proper cross-examination, and irrelevant and immaterial. You needn't mind answering that question, Mr. Cobban. That is not callling for any facts at all.

Q. Very well, have you any knowledge as to the real transaction that occurred between Jakways & Faust and Doney, as to the amount of money that was actually paid him other than what they might have told you, and what you heard in the testimony here?

A. I have not.

Q. So you don't know of your own knowledge as to whether or not this money that you say you paid Jakways & Faust, to purchase these claims, was in fact turned over to Mr. Doney?

A. I have no knowledge on that subject. I know what I instructed—what my offer was; and as I have heretofore stated. But for all I know, they may not have paid Mr. Doney more than a dollar for his claim.

Q. You do not know that immediately, or as soon thereafter as possible, after final proofs were made, that these deeds were executed before Mr. Faust, and the land transferred to you?

(Testimony of R. M. Cobban.)

A. I know they were a few days later, yes, sir.

Q. And the timber was of such a character, as you afterwards found out, that you could safely pay the amount of money that you claim that you paid, in excess of the value over other claims that you bought. That is, the timber was so much more valuable?

A I considered it of that value so that I could then afford to pay the price that I did.

Q. Do you know what the estimate of the timber was? A. I cannot tell you now.

Q. Have you not had in your mind—can you produce it—have you anything in your possession by which you can show how much timber there was?

A. Yes, sir.

Q. I think it would be well, before the testimony is concluded to get that information, and I would like to have you produced it. Now, when you say that you had instructed Jakways & Faust to make them this offer, did you couple that with the injunction that they were not to communicate that fact to Mr. and Mrs. Doney?

A. No, sir, I did not.

Q. How do you account for the fact that these people did within the time that the record shows, convey to you without any kind of a personal interview with them, except on the theory that the arrangement had been communicated to them by Jakways & Faust, that they were instructed by you to offer them so much money?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—We object to the question for the reason that it is not proper cross-examination and irrelevant and immaterial.

Q. The record shows that they conveyed to you within a very short time after they returned to Helena. Are you able to say when you had instructed Jakways & Faust to offer them so much money, that it was not communicated to these entrymen?

By Mr. WALSH.—He has answered that already.

Q. What was your answer?

By Mr. WALSH.—He has answered that already, that he absolutely don't know; that he was not there.

Q. Is that your answer, Mr. Cobban?

A. Yes, sir, I don't know whether they did or not.

Q. So you wouldn't be responsible for what representation they made if he did make any?

A. Their instructions were to make this offer after these people had proven up on their claims; and if they made any other offer, it was on their own responsibility.

Q. Now don't you know as a matter of fact, Mr. Cobban, that you had understood on giving these instructions, and made this definite arrangement with Jakways & Faust in the Doney cases, that they were to secure these lands—that timber for you, those entries and the timber on the homestead, under precisely the same conditions that you had secured all of the timber claims, that we had been considering here for the last few days, namely, that they were to see that they filed; that they

(Testimony of R. M. Cobban.)

paid all of the expenses that were necessary in and about the filing, and the land office procedure, and that they were to pay the money into the land office for the purchase price of the two claims, and when they got through, they were to secure deeds from them for a hundred dollars apiece, or substantially that sum?

By Mr. WALSH.—You had better ask Mr. Cobban if every word he has testified to is not willful and corrupt perjury. Wouldn't that answer the purpose just as well?

By Mr. MAYNARD.—I am not classifying this testimony of Mr. Cobban's at this time.

By Mr. BICKFORD.—We will ask that the questions be read to the witness and that he be allowed to answer it and each of the portions of the question, as they are propounded to him, as the question is a complicated one, and I think is an unreasonable request to make of the witness, to ask him to answer it all at once.

By the EXAMINER.—Very well, let the question be read to the witness in portions and answered by him

The question was then put to the witness in portions, as follows:

Q. Now, don't you know as a matter of fact, Mr. Cobban, that you had understood on giving these instructions, and made this definite arrangement with Jakways & Faust in the Doney cases, that they were to secure these lands, that timber for you?

(Testimony of R. M. Cobban.)

A. I certainly didn't make any definite arrangement or any arrangement in regard to the Doney claims. I answered fully the transactions in regard to the Doney claims once before. I had no arrangements in regard to them.

Q. And the timber on the homestead, under precisely the same conditions, that you secured all of the timber claims, that we have been considering for the last few days, that they were to see that they filed on the land, and that they paid all of the expenses necessary in and about the filing, and the land office procedure, and that they were to pay the money into the land office for the purchase price of the two claims; and when they got through, they were to secure deeds from them for a hundred dollars apiece, or substantially that sum?

A. As to the latter part of the question, I will say that no such thing in any way, shape or manner—no such agreement or understanding between Jakways & Faust and myself was had, that such should be done.

Q. And don't you know, as a matter of fact, that neither Mr. Doney, nor his wife had received in any way, shape or manner, for their claim, and for the timber on their homestead any more in proportion that those that we were last considering, the Reeves family entries—don't you know that? A. No, sir, I do not.

Q. That the only cases that they would receive any extra money in, would be the homestead, and that would be the amount that the timber on the homestead would bear in proportion to the other two claims?

(Testimony of R. M. Cobban.)

Mr. WALSH.—It is a pretty difficult matter for anybody to know that.

A. No, sir.

Q. And that the whole amount paid for the timber on the two claims wouldn't exceed the amount they received for the loan?

A. I have stated that I did not know the amount that Mr. Doney received for the land, but I do know what my instructions were to offer them.

Q. Well, I now call your attention to the Stewart and Opsata transactions, and I show you Complainant's Exhibits Nos. 171 and 176, and ask you if the considerations named in those two deeds were the true considerations?

A. No, sir, they were not.

Q. The consideration named in each of those deeds are eight hundred dollars apiece; what was the true consideration if you know?

A. I don't know the exact consideration, but about $550.00 in each case—five hundred or five hundred and fifty dollars.

Q. In each of these cases the timber only was conveyed? A. Yes, sir.

Q. And the land that was entered under the Stone and Timber Act was reserved by the entrymen?

A. Yes, sir.

Q. And when you say $550.00 in each case, you embrace within that the four hundred dollars that would be required to pay for the land?

(Testimony of R. M. Cobban.)

A. I don't embrace any particular sum. That is the consideration for these deeds.

Q. Well, what do you mean by that?

A. I mean that I paid so much for the timber.

Q. What is that?

A. You might as well ask me whether he went and bought his wife a pair of stockings with the money as to ask me that. I mean that I made him an offer of so much for the timber on those claims, to purchase it for so much money. What I mean was that I made him an offer for those locations of five hundred and fifty dollars in each instance.

Q. Was that five hundred and fifty dollars to be used by you or the entrymen or by Jakways & Faust to pay for the land?

A. I don't know what it was to be used for; they could use the purchase price of that land for whatever they pleased.

Q. Well, did you know as a matter of fact that the money was advanced to these entrymen to pay for the land?

A. I had so understood that Jakways & Faust loaned these people money to make their entries.

Q. The dates of these deeds are both the 9th of September, 1899, and the acknowledgment appears to be on the same day, and the deeds—the dates of the acknowledgment—and the dates of the final proofs in both of the cases were the sixth of September, three days before the signature of the deeds. Now, had you had a

(Testimony of R. M. Cobban.)

conversation with Mr Stewart or with Mr. Opsata at any time during the summer in regard to the buying of this timber? A. No, sir.

Q What was that? A. No, sir, I had not.

Q. Did you know Mr. Stewart?

A. I believe I met Mr. Stewart once during the summer.

Q. You met him once? A. Yes, sir.

Q. Before he sold to you? A. Yes, sir.

Q. Where was that?

A My impression is that it was at Gottlieb Brunner's place in Ovando.

Q. Was Mr. Jakways along?

A. I don't remember.

Q. Was Mr. Griswold there with you?

A. I think he was.

Q. And you are not positive whether Mr. Jakways was there or not; he might have been, may he not?

A. I am uncertain.

Q. Do you remember what the circumstances were of you and Mr. Griswold being with Mr. Stewart at that time and place? A. Yes, sir.

Q. What was it?

A. I was up there for the purpose of looking over a section of land with Mr. Gottlieb Brunner. He had a section of land for sale, and at that time I met Mr. Stewart and had an introduction to him—very little more than an introduction. Mr. Stewart was talking at that time of taking up a timber claim.

(Testimony of R. M. Cobban.)

Q. Who had he been talking with about taking up this claim? A. I couldn't say.

Q. How do you know he was?

A. Why, he told me there that day that he was talking about taking up a claim.

Q. Did he point out the land to you that he proposed to take up? A. I think that he did.

Q. And the land that he proposed to take up he pointed out to you?

A. My impression is that he showed me some lands, yes, sir.

Q. Wasn't that Brunner land in section 17, and his in section 18, and didn't they join?

A. Well, that I cannot say not.

Q. If you cannot say that, are you prepared to say that as a matter of fact at any time and place in the presence of Mr. Stewart, in the presence of Mr. Griswold, and in the presence of Mr. Jakways, you did not run out the lines right there? And make in a general sort of a way, an estimate of the timber on the land that Stewart pointed out to you as the land he wanted to take up, and which he did afterwards take up and convey to you?

A. I couldn't say as to a portion of that, no, sir. Our object in going there had been to see what timber Gottlieb Brunner had in a railroad section that he had purchased. We ran out those lines, and we were some time in getting them. My recollection is that Mr. Stewart was there at the time, and when we got through running those lines he wanted to know where the lines would come, and

(Testimony of R. M. Cobban.)

whether they would come on the subdivision adjoining. It was that claim—I am unable to say at this time whether that was the claim that Mr. Stewart subsequently took up or not. I am unable to say as to that.

Q. Well, weren't you informed at that time and place, that as a matter of fact Mr. Stewart did not care particularly about the timber, but he was anxious to get the land to join on to other lands that he had?

A. No, sir, I don't think so; not at that time.

Q. Well, didn't you at that time and place, in a conversation that you had with Mr. Stewart, enter into an agreement with him, that he should enter that particular piece of land, and that you would pay his expenses, and pay for the land, and he retain it after he had made his final entry upon it, and you took off the timber?

A. No, sir, I did not.

By Mr. BICKFORD.—That makes four times now that he has sworn that nothing of that kind transpired.

Q. Well, did you see him after that time and place until after he had conveyed to you?

A. I have no recollection of ever having met Mr. Stewart after that time until I met him in Helena here.

Q. After these proceedings were commenced?

A. Yes, sir.

Q. Well, then, how was it that he did on the date that the deed bears date, convey to you?

A. Well, I cannot say exactly as to that, or just why it is he did on that day, but I was informed that about so much money would buy that claim. I think I informed

(Testimony of R. M. Cobban.)

Jakways & Faust that they were to buy the claim if they could get it at so much. I did learn that—but not from Mr. Stewart—that the land was the most desirable thing for him, and I had an intention after he had proved up, to make him an offer, and that that figure would buy the land.

By Mr. BICKFORD.—Do you mean the land or the timber?

A. The timber. I made the offer for it.

Q. Who did you receive that information from?

A. I cannot say.

Q. Well, wouldn't that—the person that gave you the information, isn't that as fresh in your memory as the information itself?

A. No, sir, because I talked with a good many different people about those lands, and to people taking them up, and I had several conversations with—I had one conversation with Jakways or Faust over the telephone from Helena here, and I had letters from time to time that gave me an intimation that probably certain people might want to sell, or something of that kind.

Q. Jakways telephoned you from where?

A. Telephoned me from Helena.

Q. Telephoned you from Helena? A. Yes, sir.

Q. And where were you? A. I was in Missoula.

Q. Was he a member of the firm?

A. No, sir; he was not.

Q. He was a brother of the partner of Jakways & Faust? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Do you know what he was doing here in Helena?

A. I think Mr. Jakways was here at the time he telephoned to me, I think he was here as a witness.

Q. Don't you know, as a matter of fact, that he was a witness in one of the cases, which he was carrying through and which afterwards the land was conveyed to you?

A. Yes, sir.

Q. What entry was it?

A. Well, I think he—I think it was the Doney claim that I had some talk with him about.

Q. And while he was here as a witness in the Doney cases, he called you up by telephone in Missoula and gave you this information?

A. When he had proved up, I think I called him up and asked him about the Doney claim.

Q. Then you knew, as a matter of fact, while you were in Missoula, that he was up here as a witness in the Doney cases, and called you up on the telephone, on that business?

A. Certainly, because I had notice of that claim, and all of the claims in that section of the country. I kept a little book so as to know when these claims were coming up for final proof, and to keep posted about them.

Q. Who was the other witness in the Doney case?

A. I don't remember.

Q. Well, did Mr. Faust come here from up in the country at Ovando, and leave his work there, and come here as a witness in the Doney case, without any understanding on your part that you were to reimburse him?

(Testimony of R. M. Cobban.)

A. Yes, sir, I had nothing to do with it.

Q. Nothing whatever to do with it? A. No, sir.

Q. Did you know how he left his work and came up here, and paid his expenses?

A. I think from his evidence in the case that Mr. Doney paid the expenses.

Q. Do you know from anything else than his testimony? A. No, sir, I do not.

Q. Well, how did Mr. Faust come to tell you about these other claims, if you know, and about his telephonic business?

A. I haven't said that Mr. Faust did that.

Q. What is that?

A. I haven't said that Mr. Faust did.

Q. I understood you to say that in a conversation you had over the telephone in Helena that he gave you the information that these claims could be secured?

A. I did not so state.

Q. Well, what did you state?

A. I simply stated that I had information in different ways.

Q. Well, didn't you state that one of the ways came by telephone?

A. In regard to the Doney claims I think that was.

Q. Didn't you say that while he was here in Helena, attending to the Doney cases, you called him up by telephone, and while he was talking about the Doney cases, you told him about these other cases?

A. No, sir, I did not.

(Testimony of R. M. Cobban.)

Q. Well, now, then, if, as a matter of fact, you received this information, and cannot tell who you received it from, isn't it possible that you received the information from Stewart himself? A. No, sir, I don't think so.

Q. Well, why not, as well from him as anybody else?

A. Because I didn't talk with Mr. Stewart about the purchase of his claim at all.

Q. Very well, then you never did talk with him about it? A. Not about the purchase of his claim.

Q. When did you first find out that the land was to be sold to you?

A. Well, I don't think that I did find it out until after the deal was made—until the deed was delivered to me, that it was absolutely to be sold to me.

Q. You don't think you did? A. No, sir.

Q. Until the deed was delivered to you?

A. No, sir.

Q. And that was—and that you say, was the first time that you think you had knowledge that you was to receive this land? A. Yes, sir.

Q. Do you remember who delivered the deed to you?

A. Wallace P. Smith.

Q. How did he happen to deliver it to you?

A. I sent Mr. Smith up there to see if he could make some purchases.

Q. What was the occasion of your sending him up there?

A. Mr. Smith was working for me. He was an attorney in Missoula, and I hadn't the time myself to go up

(Testimony of R. M. Cobban.)

and attend to it; and so I asked Mr. Smith to go and attend to it for me, and to see if he could make this purchase.

Q. What do you mean by "this purchase"?

A. The purchase of this land.

Q. Well, what purchase do you have reference to?

A. Well, there were three claims, I think three or four. I think there was the Hoyt claim, and the Stewart and the Opsata claims that had been proven up on, and I sent him up there with instructions to purchase those claims, if he could do so for a certain sum. He was to go to Jakways & Faust, and they would give him such assistance as they could. I asked them to do so.

Q. Well, can you state, Mr. Cobban, why you had written up to Jakways & Faust that they should render all the assistance they could? What was the obligation in the matter which called for the services of your attorney, Mr. Smith? Why couldn't Jakways & Faust do just as well as they could in the Doney cases, and as they did in those cases?

A. I didn't know but what they could just exactly as well, but I don't know. There might have been something else that I wanted Mr. Smith to do at the same time up there; there might have been some other business, but that is the way I took to do it.

Q. You don't now recall what the special reason was for sending Mr. Smith up there? A. No, sir.

Q. Well, when you say he was working for you at that time, do I understand you to say that he was working for you in the office? A. No, sir.

(Testimony of R. M. Cobban.)

Q. Well, what was it? Just let me understand you; when you say he was working for you, what do you mean by that?

A. Well, he was looking up some tax matters that I had there in town, and handling some tax deeds. He was looking after the—looking over the abstracts of title of scrip lands that I was buying, and attending to part of the correspondence in regard to that, and any other services that I required of him.

Q. How old a man is he?

A. Mr. Smith is probably a man of 37 or 40 years of age.

Q. Now? A. I should judge so.

Q. Did he have an office in your building at that time?

A. No, sir, he did not.

Q. What is that? A. He did not.

Q. Well, I don't wish to be unduly inquisitive in regard to the matter, Mr. Cobban, but it is peculiar when you have a lawyer working for you. What I meant to say was, was he hired by the month, or by the year, or what?

A. He was hired by the month to do such work as I required of him.

Q. You paid him so much a month for doing any work that you wanted him to do?

A. Yes, sir, up to a certain limit; he wasn't to give all his time for a hundred dollars.

Q. You paid him a hundred dollars, did you?

A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. And that is the reason why he took the acknowledgments in so many of these cases?

A. Well, I don't know that particularly, but Mr. Wallace Smith was near by; his office was just across the street, and he was perhaps the nearest notary to reach, or the easiest to reach.

Q. Well, as a matter of fact, he was more or less connected with you, in and about the transactions which led up to the conveyance of these lands to you, was he not?

A. No, sir, not at all. He had nothing to do with the purchase of lands, other than in a very few instances, like those I am speaking of, where I sent him specially to attend to it. Further than that he had nothing to do with it.

Q. Well, when you, as a matter of fact, sent him specially, you communicated to him just what you wanted him to do, did you not?

A. I communicated to him my desire to purchase that land, and for him to try and purchase it.

Q. And didn't you state to him, as a matter of fact, that taking for instance the Stewart matter, that you wanted him to go up into that country and take the acknowledgment of Mr. Stewart, and that you had bought the land? A. No, sir.

Q. Didn't you know that before Mr. Smith left Missoula, that the arrangement for the purchase of the Stewart claim had already been made?

A. No, sir, I did not.

Q. Isn't it true, that as a matter of fact, the arrange-

(Testimony of R. M. Cobban.)

ments had been so far made, that you told him to draw up deeds in the Stewart case, before he left home, and that he went up to Ovando with the Stewart deed in his pocket, ready for execution?

A. No, sir, I don't think it is the case at all.

Q. Well, you won't say but what that is the case, will you? A. Well, I know that it isn't the case.

Q. You so swear, do you? A. Yes, sir.

Q. That Stewart didn't have the deed prepared in his pocket before he left Missoula, in the Stewart matter?

By Mr. WALSH.—That wasn't your question. Wait a moment, Mr. Cobban, don't answer that. It isn't fair.

By Mr. MAYNARD.—What is not fair?

By Mr. WALSH.—They are catch questions, both of them. In one question you ask him if he didn't instruct him, and if he didn't have the deed prepared in his pocket, ready for Stewart to execute to him, and the truth about the matter is that the deed was not prepared, ready for execution.

By Mr. MAYNARD.—I am not accustomed to this "catch" business.

By Mr. WALSH.—Well, you tried it this time.

By Mr. MAYNARD.—I never do try it.

Q. What I intended to ask you, Mr. Cobban, was this: If you didn't know, as a matter of fact that Mr. Smith had the deed drawn before he ever left Missoula to go up there? A. I know that he did not.

(Testimony of R. M. Cobban.)

Q. How do you know that?

A. Because I am certain that he did not.

Q. Have you got the deed in your possession which Stewart executed to you?

A. I may have it in my papers?

Q. Well, don't you know that the production of that deed itself, would show the fact that it was drawn up in Missoula? A. No, sir.

Q. Do you know where it was drawn up?

A. I think it was drawn up at Ovando.

Q. Before or after Mr. Smith, the man that you sent, had seen Mr. Stewart?

A. That I am unable to say.

Q. Well, if it was drawn up there at Missoula, or at Ovando, prior to Smith's seeing Mr. Stewart, was not that by reason of the fact that an arrangement had already been made by which he was to convey for a certain amount?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and further because the hypothesis of counsel is entirely contrary to the answers of the witness heretofore given, and is intended to mislead the witness in his answer to the question.

A. No, sir.

At this point an adjournment was taken until ten o'clock, July 16th, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Wednesday, July 16th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

R. M. COBBAN, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. When we adjourned last night I was asking you about Wallace P. Smith, that you say was working for you by the month, and asked you if you knew how he happened to be up near Ovando at the time that he took the Stewart deed, when he was present with Mr. Faust when he acknowledged and executed and delivered the deed. Now, I ask you if during the night you have thought the matter over and refreshed your recollection on that subject?

A. Well, I don't know that I have thought it over particularly; I sent him up there to do this, and perhaps to attend to other matters.

Q. Why did you want him to do this; why couldn't Faust do it just as well as he could in the other cases, without his assistance?

A. I can't tell you now; I don't know.

Q. You had not seen Mr. Stewart in regard to the matter yourself, as I understand you?

A. No, sir.

Q. It is a fact, as it appears in the record, that Mr. Smith, that you sent out there, drove out with Mr. Faust on Sunday and met him there, and that before that time he had had the deed prepared, and he accom-

(Testimony of R. M. Cobban.)

panied them to his house, and he and his wife signed the deed and it was delivered over to the parties that went there. Now, you don't know anything about how it happened that that transaction took place?

A. I know this, that I sent Mr. Smith to see these parties, and also gave him a letter to Jakways & Faust, and asked him to see them and confer with them about the purchases. I think that I had told them previously or had sent them word that, if they could buy those claims for a certain sum, to do it. My recollection is now that I did not know at the time I sent Wallace Smith if I could purchase them, but for him to go and try and purchase them, and see Jakways & Faust Faust and see whether they had purchased them or made any arrangements for the purchase of them.

Q. And you say that that was the way that that took place?

A. Yes, sir, that is my recollection of it.

Q. And that the deed was not prepared in advance before Mr. Smith left Missoula?

Mr. BICKFORD.—He did not say anything of the kind, and we object to this on the ground that it is not proper cross-examination, the statement of the witness having been that he did not know whether the deed was prepared or not, but that Smith had no directions to prepare any deed.

Q. Is that the fact, as your counsel states?

(Testimony of R. M. Cobban.)

A. Well, I am very certain that he did not prepare the deed at Missoula.

Q. So that your counsel is mistaken in regard to the matter?

A. Well, I am very positive that he did not prepare the deed in Missoula; he certainly did not under my directions, and I feel confident that he did not.

Q. How did it happen that the deed was drawn up previous to Smith's going out to see Stewart?

A. If I was going to buy a piece of property out in the country and thought that the probability was that I might be able to buy it, I might take a deed along with me.

Q. And have all of the terms and conditions prepared in advance and entered in the deed?

A. No, I don't know as to that.

Q. In this case the deed was presented to Mr. Stewart, and he read it, and was asked if it was all right, and he said yes, and he and his wife signed the deed, and the transaction was closed in a few minutes, as the testimony is.

Mr. BICKFORD.—We object to the statement of what the testimony is by counsel, it being likely that he would color the same to suit his own views rather than give it as it is, and we submit that it is not proper cross-examination. It is manifest from the testimony of this witness that he has no personal knowledge as to the transaction which occurred at the time when the

(Testimony of R. M. Cobban.)

deed was drawn, it being shown by all the evidence that the witness was not present.

Q. Well, if such took place in substance, as I have just stated to you in my last question, Mr. Cobban, can you state how that was done without an agreement being entered into in advance of the presentation of the deed to him?

Mr. BICKFORD.—We object to this as not proper cross-examination and as calling for a conclusion of the witness and not for a statement of fact.

A. I think it has been answered here that the consideration as shown in that deed was not the true consideration. So far as that is concerned, if the deed had been prepared beforehand and taken out there to see if they could purchase of Mr. Stewart, it might have been done in that way. I see no reason why they might not have taken the deed with them, going for the express purpose of trying to buy the claim. I don't know —there may have been—Mr. Jakways or Mr. Faust may have seen Mr. Stewart in the meantime, before going out with Mr. Smith, and arranged for the purchase of that claim; I don't know.

Q. They may have made a complete agreement with him as to what he would take and what they would do, and that fact may have been communicated to you, might it not?

A. No, sir, I don't think that I had any communication from them as to just what could be done in that

(Testimony of R. M. Cobban.)

case, but I think that I did give them instructions as to what they could do.

Q. What were those instructions?

A. Whether I had sent that up previously, or whether it was in the letter to them that was taken up by Mr. Smith, I am unable to say, but at that time I had told them what I was willing to do.

Q. What was that?

A. It was to pay in the neighborhood of five hundred dollars for Mr. Stewart's claim; I don't remember just the consideration.

(By Mr. BICKFORD.)

Q. You never bought his claim, did you?

A. For the timber growing upon his claim.

(By Mr. MAYNARD.)

Q. That would be one hundred dollars over and above the purchase price?

A. I didn't figure it in that way.

Q. And do you know, as a matter of fact, that that instruction was carried out? A. I do not.

Q. Do you know how much they did pay Mr. Stewart? A. No, sir, I do not.

Q. Do you know whether they paid him anything or not over and above the money that they advanced for him in buying the land for him, and the expenses and some little credit that he may possibly have received on their books?

A. I don't know; I know that the payment, what-

(Testimony of R. M. Cobban.)

ever it was, was made to Jakways & Faust for him at his request.

Q. Have you any data to show what you did pay Jakways & Faust for the Stewart claim?

A. No, sir, not exactly.

Q. I didn't ask you "not exactly"; I ask you if you have any data of any kind?

A. I cannot tell you whether I can find out what that was or not.

Q. And you have no recollection yourself of the amount of money that you paid them on this account?

Mr. BICKFORD.—The witness has given his best recollection. We object to the question as a repetition of what he has already inquired concerning.

A. No, sir, I cannot tell.

Q. I show you now Complainant's Exhibit No. 161, being the deed of Nels O. Opsata and wife to you.

A. Yes, sir.

Q. That bears the same date as the Stewart deed. Do you know Mr. Opsata? A. I do.

Q. Did you meet him on the same day that you met Mr. Stewart when you were up there with Mr. Griswold?

A. I have no recollection of ever having met Mr. Opsata, though I may have done so.

Q. You say you have no recollection of ever having met Mr. Opsata previous to the beginning of this lawsuit?

(Testimony of R. M. Cobban.)

A. I don't recollect of it, no, sir; yet I may have met him, however. I met a good many people whose names I was not particularly familiar with, and I may have met him.

Q. Do you remember having had any conversation with him or his wife in regard to the buying of the timber from him? A. No, sir.

Q. Did you know of the location of the land that you bought from Opsata?

A. I don't remember it now.

Q. Look at the description and see if you can refresh your recollection?

A. I could not tell from the description whether I ever saw the land or not.

Q. Are you prepared to say that on the day that you had the conversation with Mr. Stewart, you and Mr. Jakways and Mr. Griswold did not go over and examine the timber that is described on the land in the Opsata deed? A. I don't think we did.

Q. You rather think you did?

A. I don't think we did.

Q. But you are not prepared to say that you did not? A. No, sir, I am not.

Q. Do you remember looking at other pieces of land, other than the Stewart land that you bought and the land that you referred to yesterday in the opposite section?

A. I don't remember whether I did at that time; I

(Testimony of R. M. Cobban.)

remember looking at various pieces of ground for the timber.

Q. As a matter of fact, did you not on that day and at that time and place, in the presence of Mr. Griswold, instruct Mr. Jakways to take steps to see if he could get someone to enter that piece of land?

A. No, sir, I certainly did not.

Q. Do you know who Opsata got the money from?

A. Only from his evidence here in the record.

Q. If, as a matter of fact, from that testimony which you refer to, he obtained all the money and all the expenses from Jakways & Faust to pay for that particular description, was not that done by reason of the agreement which you had made with Jakways & Faust that that very thing should be done?

A. No, sir, there was no agreement between myself and them that any such thing should be done.

Q. When did you first know that this particular description contained in the deed was for sale, and that you could buy it?

A. I don't know that I knew positively that it was for sale until the deed had been delivered to me, but I may have had that information even before I sent Mr. Smith up there.

Q. If, as a matter of fact, you had no knowledge on the subject until the deed was actually delivered to you and you found that you were the owner of it, tell me how it happened that steps had been taken by other people so that you obtained the title to this land?

(Testimony of R. M. Cobban.)

A. I explained yesterday how I sent Mr. Smith up there. The Opsata case and the Stewart case were practically the same thing; they were purchased at the same time and under the same conditions.

Q. Why did you send Smith up in the Opsata matter?

A. For just exactly the same reason that I sent him in the other matter, the Stewart matter.

Q. Where did you find out about Opsata; as I understand you, you did not know him and had not had transactions with him in any way?

A. I knew of his entry.

Q. How did you ascertain that fact?

A. In various ways, as I explained yesterday. I was trying to keep posted on those things as fully as possible; I had the memorandum of his location and when he would prove up, and had made inquiries about these people and about their claims, and I think I had estimates on their timber.

Q. While all those things are true in regard to the general management of your business up there, I am now asking you if you had any particular, definite, exact knowledge as to how you acquired the information in the Opsata case? A. I cannot tell you.

Q. Had you instructed anybody as to how much you would pay in the Opsata case? A. Yes, sir.

Q. Whom?

A. I instructed Mr. Smith, and I think that I instructed Jakways & Faust.

(Testimony of R. M. Cobban.)

Q. What was the instruction?

A. That I would pay about five hundred dollars for the claim; I don't remember just how much, but it was in that neighborhood.

(By Mr. BICKFORD.)

Q. Did you ever try to buy the claim?

A. Only in the way that I speak of.

Q. Did you actually buy it?

Mr. MAYNARD.—Wait a minute. I object. I am cross-examining.

The EXAMINER.—Don't answer any further; because he objects.

(By Mr. MAYNARD.)

Q. Now, Mr. Cobban, you say that it was about five hundred dollars that you were willing to pay in that case? A. In that neighborhood, yes, sir.

Q. Was that based entirely on the estimates that had been furnished you?

A. Yes, I think so. Well, it was on the value of the timber; it was simply for the timber and not for the land.

Q. Didn't you and Mr. Griswold go over this particular description and examine the land and satisfy yourself that it was worth taking?

A. Not for that purpose. I may have gone over that timber as I went over a good deal of timber; I went over a good deal of that country in a day or two, and

(Testimony of R. M. Cobban.)

just what pieces were gone over I could not say either after I had gone over it. It was more of a general thing, to see the conditions of the timber and logging conditions, etc.

Q. And only in that general way was Mr. Griswold's connection with it?

A. As far as I know, yes, sir.

Q. Let me refresh your recollection. The records show that he was a witness, advertised, in the Opsata case, as one of Opsata's witnesses. Do you know anything about how that happened?

A. No, sir. I had nothing to do with Opsata's witnesses.

Q. And his appearing there as a witness was not one of the many things that Mr. Griswold was doing for you at that time under his contract with you?

A. No, sir; that is, he was not advertised as a witness on account of my contract.

Q. Is there any particular piece of land that you looked over up there with Mr. Griswold that you did not purchase; I mean, where you particularly examined the timber? A. Why, yes.

Q. With Mr. Griswold?

A. I think there were several pieces.

Q. But you cannot specify any?

A. Well, I was there just on a general tour through the country, and we covered a good many miles of territory and went over a good deal of timber, and I am

(Testimony of R. M. Cobban.)

very certain that Mr. Griswold called my attention to some timber of Mr. Manning's and I know I did not purchase that.

Q. Did you go to the Manning timber and make an examination of it?

A. I did during that season.

Q. I mean when you were with Mr. Griswold at the time that he called your attention to it?

A. My impression is that Mr. Griswold was with me at that time, and yet I am not certain.

Q. Do you know what arrangements Jakways & Faust made with Mr. Opsata, as to whether they carried out your instructions about the five hundred dollars or not.

A. Well, I know that the timber was purchased for me and I got the deed.

Q. And beyond that you don't know, except as the testimony has been disclosed here?

A. No, sir.

Q. You have no knowledge of furnishing them the money? A. To pay for that timber?

Q. Yes. A. Yes, I paid for the timber.

Q. How?

A. I paid it in a check, I suppose.

Q. By depositing it to their credit in the Missoula bank?

A. Well, I don't know. I found a couple of checks last night that were given them on account of the different purchases.

(Testimony of R. M. Cobban.)

Q. Where are those checks?

A. I have them here. There is one that was on account, and there is one that was partly on account and partly on deeds in escrow at the bank.

Q. How did it happen that you found these two checks last night?

A. I had them here yesterday, but they had been misplaced instead of being all together; I supposed Jakways & Faust's checks were all together, but they simply got in another package.

Q. While you found these, did you find any more that were given to Jakways & Faust or in which Jakways & Faust were concerned in any way?

A. I did not.

Q. Which passed through their hands or to their credit?

A. I did not. If I had I would be very glad to give them to you. I have no reason to conceal any of them or hide them away.

Mr. MAYNARD.—I will read these checks into the record: "The First National Bank of Missoula, Montana. Pay to the order of Jakways & Faust, twenty-five hundred dollars (in figures and in writing) dated Missoula, Montana, September 8th, 1899, R. M. Cobbon." Endorsed: "Pay Western Montana National Bank, Missoula, Montana, or order, Jakways & Faust, Ovando, Montana." With the stamp of the bank, indicating its payment, endorsed thereon.

(Testimony of R. M. Cobban.)

The second check is as follows: "The First National Bank of Missoula, Montana, pay to the order of the Western Montana National Bank fifty-four hundred dollars (in figures and in writing), dated Missoula, Montana, September 21st, 1899, R. M. Cobban," with the stamp of the bank indicating its payment endorsed thereon.

Q. How do these two checks differ from the checks that were read into the record yesterday afternoon?

A. Well, the main difference is the date and the amount.

Q. I understood you to say a moment ago that you had found certain checks which were given for a certain purpose.

A. The notation on the stub of that twenty-five hundred dollar check was "on account." The notation on the stub in the case of the fifty-four hundred dollar check to the Western Montana National Bank was that thirty-four hundred dollars was paid on deeds in escrow and two thousand dollars on account.

Q. Where are the stubs? A. In my room.

Q. When you brought the checks to the Examiner's room, why didn't you bring the stubs?

A. I understood the other day that the introduction of the check was all that you required; I have no objection to producing the stub.

Q. I did not say anything of the kind; that was a suggestion that was made by my friend, Judge Bickford,

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—What suggestion did I make?

Mr. MAYNARD.—That where the checks were offered in evidence there was no occasion for using the stubs.

Mr. BICKFORD.—I think the statement that I made was that the check itself was the best evidence, and that the stub was a memorandum kept by the party for his own information, and I still say so.

Q. Very well. Then, this memorandum was kept for your own information, was it?

A. Certainly.

Q. Now, you say that—what is the notation on the stub again?

Mr. WALSH.—No, no. Let the stenographer read it, if you want it.

(Answer referred to read by stenographer.)

Q. Just what do you mean by the words "on account"; what does that cover?

A. Well, I think that that was sent them in the purchase or for the purchase of claims.

Q. Now, I call your attention to the case of the transfer of the land that was entered by Mr. Hoyt, and show you Complainant's Exhibit No. 138. Do you know what the true consideration was for the lands described in that deed? A. Yes, sir.

Q. How much was it?

A. Seventeen hundred dollars.

Q. Did you pay the money directly to Mr. Hoyt?

(Testimony of R. M. Cobban.)

A. I did not.

Q. Did you pay him any?

A. No, sir, I did not.

Q. Who did pay it to him?

A. That purchase was made through Jakways & Faust.

Q. How did they come to make that purchase?

A. Well, I sent Mr. Smith there, and I had given them instructions also to purchase that for that amount of money if they could.

Q. When did you find out that the Hoyt property was for sale?

A. Why, I don't remember; shortly before the deed was executed.

Q. How long would you say was embraced in the words "shortly before the deed was executed"?

A. Well, perhaps two or three days.

Q. That was the first knowledge that you had of anything about the Hoyt transaction?

A. As to the amount that it could be purchased for yes, sir.

Q. Who did you learn that from?

A. I am unable to say at the present time. Jakways & Faust may have informed me, or I may have learned in some other way, and I am not positively certain that I knew just what the lands could be purchased for until the time I sent Mr. Smith up there, but my impression is that I did.

(Testimony of R. M. Cobban.)

Q. Had you had a talk with Hoyt yourself in regard to the matter?

A. Not about the purchase of his timber.

Q. Had you any talk with him about the transaction at all?

A. No, sir, only about the timber in general.

Q. When was that?

A. Well, that was in the early part of the summer; I don't remember just what time.

Q. You don't remember when the time was?

A. No, sir.

Q. Where did you see him?

A. I saw him at his place.

Q. What were you doing there?

A. I was in that country looking over the country generally and taking a few days rest; I had my wife and children with me.

Q. And you were at his house?

A. I was at his house, yes, sir.

Q. And took at least one meal there?

A. I did.

Q. Had you known Mr. Hoyt before this?

A. I had not.

Q. And that was the only time that you had any conversation with him until after he conveyed to you?

A. It was the only time I have any recollection of speaking to Mr. Hoyt.

Q. Do you remember how long a time it was after

(Testimony of R. M. Cobban.)

the conveyance that I have shown you—it was before you saw him or had any conversation with him?

A. Yes, sir, I saw him a few days after the conveyance.

Q. When the matter was closed up?

A. It was after the matter had been closed up.

Q. Where did he see you? A. In Missoula.

Q. Did you have a conversation with him at that time in regard to this transaction? A. I did.

Q. What was the subject matter of it?

A. The subject matter was the consideration in that deed.

Q. Well, as I understand it, the money had been paid and the deed delivered to you? A. Yes, sir.

Q. And that was done at Ovando? A. Yes, sir.

Q. What did he come away down to Missoula for?

A. Because the consideration as stated in the deed was two thousand dollars. He sold the timber to me for seventeen hundred dollars. Mr. Jakways, I think, negotiated the deal for me; it was general instructions to the firm, but I think Mr. Jakways was the man that negotiated the deal and purchased the timber for seventeen hundred dollars, but when he presented the deed, the deed called for a consideration of two thousand dollars, and Mr. Hoyt thought that Jakways & Faust were holding him up for three hundred dollars, in other word, that they were getting two thousand dollars for the land, and he didn't think that that was right, if that was the case.

(Testimony of R. M. Cobban.)

Q. So, the sole purpose of his visit to Missoula to see you was to make the inquiry as to whether seventeen hundred dollars was all there was in it, or whether Jakways & Faust had held up three hundred dollars?

A. I don't know that that was his sole purpose in visiting Missoula.

Q. In seeing you?

A. As far as I know, yes, sir; he called on me about it.

Q. And you had no conversation or correspondence with him between the time of your chance meeting with him up at his home and up to this time?

A. No, I am not sure about that; I am not certain but what I wrote to Mr. Hoyt, offering him and his wife so much for their lands, and my impression at the present time is that I did write to Mr. Hoyt.

Q. When was that?

A. I cannot give dates, but if I did write to Mr. Hoyt, as I am quite certain I did, it was before this deed was executed and after his proof had been made.

Q. When did you find out that he would take so much money?

A. Well, I am not absolutely certain about that, but I think it was before I sent Mr. Smith up there, and yet I am not certain.

Q. Up where? A. Up to Ovando.

Q. What did you send him to Ovando for?

(Testimony of R. M. Cobban.)

A. I have already stated several times in my testimony this morning and yesterday.

Q. How far did the Hoyts live from Ovando?

A. About four to six miles; I don't remember just the distance.

Q. When you were there in May, didn't you go out with Mr. Hoyt and look over the land?

A. No, sir. I went down in Hoyt's hayfield with him, where he was cutting hay, and I think he called my attention to some timber that he had on his homestead, but I did not go around with him to look it over.

Q. So that, at no time during the entire transaction did you have any personal knowledge from a personal examination of the timber on the homestead or the timber on his wife's and his own claims.

A. Yes, sir, I did.

Q. How did you find that out?

A. I spent quite a little time in that section in running out lines and looking over considerable land in that neighborhood.

Q. Did you run out the lines on the Hoyt claims?

A. No, I am not certain that I did, but I went over a good deal of the ground at that time in that neighborhood.

Q. How would that fact enable you to determine the value of the timber on the Hoyt claims?

A. I depend largely on the estimates that were furnished me by the estimaters.

(Testimony of R. M. Cobban.)

Q. You instructed them to make estimates of these claims.

A. I did, and a great deal of other land in that same neighborhood.

Q. Was this before or after the Hoyts had filed?

A. That I am unable to say.

Q. Why did you do that?

A. I think—I am quite certain that they had filed.

Q. When you made the estimates?

A. Yes, sir.

Q. Or caused the estimates to be made?

A. I at the same time stated that I estimated or had estimated considerable Government land in that neighborhood, and some claims that were taken up by other people, some of them which I afterwards purchased, and others I did not. Mr. McNally had a claim right close by that I estimated at the same time, while we were working in that section of the country.

Q. I know, and you bought that claim from Mr. McNally, didn't you? A. I did not.

Q. Why not? A. Because I didn't.

Q. Didn't he offer it to you? A. Yes, sir.

Q. And you were satisfied that there was enough timber on it?

A. Yes, sir, there was good timber on it, but we didn't agree on the price; Mr. McNally asked me more than I felt willing to pay.

Q. McNally's entry was made at the same time as the Muchmores', was it not?

(Testimony of R. M. Cobban.)

A. I couldn't say as to that.

Q. Made at precisely the same time and in the same advertisement?

A. It is my recollection that Mr. McNally's name appears in a combination notice, but I don't remember who the parties were that he was with.

Q. How much did Mr. McNally want over and above—

Mr. BICKFORD.—We object to that as not proper cross-examination, and as irrelevant and immaterial.

A. I don't remember just what it was; it was in the neighborhood of eight hundred dollars.

Q. And you wouldn't pay that much?

A. No, sir.

Q. Wasn't the Minnie D. Hunsecker claim in the same condition?

Mr. BICKFORD.—We make the same objection to this, that it is irrelevant and immaterial and not responsive to any issue in the case, and not proper cross-examination, as it is concerning nothing that was brought out on the examination in chief.

A. Yes, sir, I think I had estimates on the land that she took up also, and Mr. Hunsecker.

Q. And they took them up, and the conditions were the same as in the Hoyt cases that you have referred to and the Muchmore cases, with the single exception that you could not make the terms with these people?

A. There were no conditions that I know of that had

(Testimony of R. M. Cobban.)

any relation to the other. I don't know what you refer to when you say the conditions were the same.

Q. What instructions had you given Jakways & Faust in regard to their buying this Hoyt claim?

A. I had told them what I would be willing to pay, and told them to make the purchase for me if they could.

Q. Do you know of their taking steps to try and buy the claims from the Hoyts?

A. It is my impression that they did, that Mr. Jakways saw Mr. Hoyt, and I think that it was he who negotiated the sale.

Q. What did you tell Mr. Jakways that you would pay?

A. I told him I would pay seventeen hundred dollars.

Q. For the two claims and for the timber growing on the homestead?

A. For the timber growing on four hundred acres of land, is my recollection.

Q. Well, that would be the two claims and the timber growing on the homestead, would it not?

A. Yes, sir.

Q. When, as a matter of fact, did you receive intelligence that they had succeeded in negotiating with Mr. Hoyt.

A. Well, I am unable to say whether I received that word prior to the time I got the deed or not, but I think I did.

Q. And that was the reason why you sent Smith up into the country, was it not, to get their deeds.

(Testimony of R. M. Cobban.)

A. Well, that was part of the reason that I sent Mr. Smith up there, was to get those deeds.

Q. Do you know how much money, as a matter of fact, Jakways & Faust did pay Mr. Hoyt?

A. No, sir, I do not.

Q. You don't know what their final terms were?

A. Only what Mr. Hoyt told me.

Q. What did Mr. Hoyt tell you?

A. That he got seventeen hundred dollars for them.

Q. Did he tell you how he got it? A. No, sir.

Q. Did he tell you what he received from them in cash?

A. I don't think he went into any details or told me anything about it, more than that he got seventeen hundred dollars.

Q. How he got it you don't know, nor he didn't tell you?

A. That they paid it to him, that is all I know.

Q. Did he tell you that they paid the money into the land office to pay for both of the claims, and paid all of the expenses? A. No, sir, he did not.

Q. Did you know that they were to do that?

A. I don't know whether I knew that they were going to make Mr. Hoyt a loan or not.

Q. Have you no recollection on the subject?

A. No, sir.

Q. Nothing had been said between you and Jakways & Faust on the subject, nor no correspondence had?

A. No, sir, not—they might in a general way—I

(Testimony of R. M. Cobban.)

might have known in general conversation that they were going to loan Mr. Hoyt money, but I had nothing to do with it and paid very little attention to it.

Q. And you made no provision for supplying the money by which they were enabled to make the loan, if they did make the loan? A. No, sir.

Q. And what was true in that case was true in all of these cases?

A. Except as I have stated, yes, sir.

Q. Now, isn't it true, as a matter of fact, that this money, these several thousands of dollars, from the partial production of the checks that are in this case—that that money was deposited by you in the bank at Missoula for the specific purpose of enabling them to do just exactly what the record in this case shows they did do?

Mr. WALSH.—We object to the witness answering that, because the question does not call for any facts from the witness—"To enable them to do what the record shows they did do."

Q. (Continued.) To enable them to advance the money to Mr. Hoyt.

A. The date of the check shows absolutely that such was not the case, but entirely contrary.

Q. Very well. If it was not in the Hoyt case, wasn't it in some of the other cases that are referred to in the bill of complaint.

A. I think that every one of the cases incorporated

(Testimony of R. M. Cobban.)

in the bill of complaint had been proved up on before the date of this check that was given to the Western Montana National Bank.

Q. Very well. But you said in your direct testimony that there were in the neighborhood of one hundred stone and timber claims that you bought, and there are less than eighty named in the bill of complaint. Will you say that this money was not deposited there for the purpose of carrying out claims that you bought through Jakways & Faust.

Mr. WALSH.—The question is unintelligible, and we object to it for that reason.

Q. Answer the question, Mr. Cobban.

Mr. WALSH.—There is no question to answer.

The EXAMINER.—Read it and we will see.

Q. (Question read.)

A. There was no such thing. My recollection is that all of the cases that were proved up on that I bought in the neighborhood of Ovando, with the exception of Charles Johnson and Cora Y. Faust, are in the bill of complaint, and I don't know but what those are in the bill of complaint, too.

Q. Are those the only ones that you bought through Jakways & Faust?

A. They are the only ones in that neighborhood that I bought at all, I think; that is my recollection now.

Q. Are those the only ones that you bought through Jakways & Faust? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Those that are named in the bill of complaint and this Johnson case?

A. Those are the only ones I have any recollection of now.

Q. All that you bought from Jakways & Faust?

A. That I bought from or through them.

Q. Can you tell me as to how you paid Jakways & Faust for the money that they advanced in the purchase of the Hoyt claims.

A. I had nothing to do with them.

Q. Didn't you pay them?

A. I paid the purchase price of the Hoyt claims, of several hundred dollars, to Jakways & Faust.

Q. How? A. By check.

Q. Where is the check?

A. It is a portion of the twenty-five hundred dollar check that was presented here to-day, I think.

Q. What makes you think it was?

A. Well, I think that I sent that up at the time that Wallace Smith went up; I think that I sent that up to them with instructions that, if they could purchase those claims at those figures, to make the purchases, and as heretofore stated I am quite certain that I had the information at that time that Mr. Hoyt would take seventen hundred dollars for his claims, and I sent that check up to them.

Q. What was the remaining eight hundred dollars to be used for?

A. To apply on the purchase of the Stewart and Op-

(Testimony of R. M. Cobban.)

sata claims if they could be made; if not, I was owing them at that time; there were deeds in escrow and I was owing them money and it would go on the general account.

Q. What deeds were in escrow at that time?

A. The Cora Y. Faust deed, I think, was in escrow, and I think the Lewis S. Jakways deed was in escrow. I am not certain whether the Charley Johnson deed was in escrow, but I think it was, and one of the Doney deeds was in escrow.

Q. How long had they been in escrow to your knowledge?

A. I can't give you the dates of those escrows nor when they were put in or when they were taken out.

Q. They might have been there several months, might they not?

A. They did not remain there any great length of time; they might have remained there thirty or sixty days.

Q. Are you prepared to say that this money was to be used for the purpose of taking up those deeds and that you were owing at the time of the delivery of the Hoyt deeds for the Jakways and Faust and Johnson deeds, and that they were still remaining in the Missoula bank?

A. It is my impression that they were.

Q. Is it anything more than an impression.

A. I had deeds in escrow in the Western Montana National Bank from Jakways & Faust at that time, at

(Testimony of R. M. Cobban.)

the time that that check was given. The check was given, as I said, for the purchase of the Hoyt timber, if it could be done, and to apply on the Stewart and Opsata purchases if the purchases could be made, and if not, why then, the check went on the general account.

Q. You mean, if not, it was put on the general account to pay for those deeds that were in escrow?

A. Yes, sir.

Q. And that those deeds were the Johnson and Faust and Jakways deeds?

A. That is my impression, that those deeds were in escrow at that time and I think one of the Doney deeds.

Q. Is it any more than an impression?

A. Well, it is a very strong impression; yes, sir; I know that some of those deeds were in escrow at that time.

Q. Will you say, if any of those deeds were there, that it was any more than the Doney deed?

A. Yes, sir.

Q. How many more?

A. I have given you all the information that I can give you positively. The date of the recording of those deeds would give you some information in regard to that, if you want to follow it up.

Q. Was the timber on the Hoyt claims unusually valuable? A. It was very good timber.

Q. And that was the reason that you were willing to pay more than the ordinary price that you were paying?

A. Yes, sir; there was quite a quantity of timber there

(Testimony of R. M. Cobban.)

as well, and there was more timber than there usually was on these claims.

Q. That was the sole reason that you were willing to give more?

A. That is the sole reason, the quality of the timber and its nearness to the river and its location and the amount of timber.

Q. Now, do you know anything about the transaction which led up to the delivery to you of the Muchmore deeds offered in evidence in this case?

A. In a general way; yes, sir.

Q. In a general way? A. Yes, sir.

Q. Well, what is that?

A. I gave Jakways & Faust instructions to purchase those claims if they could for a certain sum of money; they were authorized to offer so much for each claim.

Q. How much was that?

A. About five hundred and fifty dollars a claim.

Q. Were those instructions carried out?

A. In some instances they were.

Q. In what instances were they not?

A. Well, in the case of one of the Muchmores, Oliver, I think it was, and his wife, they did not make the purchase.

Q. You made the purchase? A. I did.

Q. What was the trouble?

A. Well; they couldn't agree on the price; they made Mr. Muchmore an offer and he didn't accept it.

(Testimony of R. M. Cobban.)

Q. How much did they offer him over and above what was to be paid into the land office?

A. Well, that I don't know.

Q. How much did they tell you that they had received from them? A. I don't know that they told me.

Q. Did they come down to Missoula to see you?

A. Mr. Muchmore came to Missoula to see me; yes, sir.

Q. Oliver E.? A. Yes, sir.

Q. And told you that the offer that he had received from you through Jakways & Faust was not satisfactory to him? A. Yes, sir.

Q. But he didn't tell you what the offer was?

A. Well, I think very likely he did; yes, I think he did.

Q. Well, what was it?

A. Well, I don't remember.

Q. Do you remember how much more you offered him than Jakways & Faust had?

A. Yes, I think I offered him fifty dollars more.

Q. And he concluded to accept that?

A. He did.

Q. How long a time was that before he proved up?

A. It was after he proved up.

Q. After he had proved up? A. Yes, sir.

Mr. WALSH.—Where did you get the impression that it was before, Counsel? He testified it was after.

Q. How long before or after?

Mr. WALSH.—Just a minute. Mr. Jakways testified that way also.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—Very well.

Mr. WALSH.—I ask you how you got that impression?

Mr. MAYNARD.—I am cross-examining Mr. Cobban.

The EXAMINER.—Yes, let Mr. Maynard have the witness.

Mr. WALSH.—You were laboring under a mistake that I wanted to correct.

A. Why, I think within a week after, probably.

Q. If you offered him fifty dollars more than Jakways & Faust had offered, aren't you able to say how much the sum was that Jakways & Faust had offered?

A. No, sir, I am not.

Q. But you do remember that the sum must have been told you at the time, and you have now forgotten it, and that when you were informed of that fact you increased it fifty dollars?

A. I think that Jakways & Faust offered them the amount that I had given them instructions to offer them.

Q. How much was that?

A. That amount I cannot now say, but I did offer him fifty dollars more for his claim than what they had offered him.

Q. Is the consideration named in the deed, being Complainant's Exhibit No. 158, the true consideration?

A. I don't think it is.

Q. Have you any knowledge as to what the true consideration was?

(Testimony of R. M. Cobban.)

A. It was about twelve hundred dollars; I think about six hundred dollars apiece; that is my recollection.

Q. Was that deal closed up betwen you and Oliver E. and his wife at that time and place?

A. No, I think not. No, sir, it was not.

Q. How are you able to determine that fact?

A. Because the deed was executed in Ovando, and that was my recollection, that Mrs. Muchmore was not at Missoula at the time.

Q. And so you sent Smith up as your representative to carry out the arrangement which you had made with Mr. Muchmore? A. I do not say so.

Q. That is a fact, is it not?

A. I don't know that Mr. Smith had any instructions in regard to Mr. Muchmore in way, shape or manner; I don't know that he went near Mr. Muchmore or saw him.

Q. He was there as a subscribing witness to the deed at Ovando. How do you account for that fact?

A. Mr. Smith may have been instructed to get the Muchmore deed as well, but the arrangement had been made with Mr. Muchmore and myself.

Q. Did you pay him directly for the deed?

A. I did not; I gave him fifty dollars, I think; I gave him a small amount of money at the time when I purchased.

Q. In what shape was that, currency or a check?

A. It must have been in currency; I don't recollect the transaction, and I haven't found such a check; at least, I don't remember of having seen it.

(Testimony of R. M. Cobban.)

Q. So, that whatever else he received for the land would be through Jakways & Faust? A. Yes, sir.

Q. Can you state the reason why—

A. Here is the check I gave Oliver Muchmore; I have just found it. I did not remember it at the time.

Mr. MAYNARD.—The check that the witness now produces reads as follows: "The First National Bank of Missoula, Montana, pay to the order of Oliver Muchmore, fifty dollars." Signed, "R. M. Cobban." Dated "Missoula, Montana, September 7th, 1899." Endorsed: "Oliver Muchmore, R. M. Cobban." With the stamp of the bank endorsed thereon as paid.

Q. Now, Mr. Cobban, the reason why you did not, as long as this land was to be conveyed to you—why you did not pay Oliver Muchmore and his wife the entire sum?

A. In the first place, Mr. Muchmore was not in a position to give a deed at that time; his wife was not present, and it was arranged that he would give a deed there, and that I was to pay Jakways & Faust the money for him.

Q. Did you give him the money?

A. Did I give who the money?

Q. Muchmore?

A. I gave him the fifty dollars.

Q. Anything else? A. No, sir.

Q. Did you send the money up by Smith?

A. No, sir, I don't think I did.

Q. Why?

A. Because that was not the arrangement with Mr. Muchmore and myself.

(Testimony of R. M. Cobban.)

Q. What was the arrangement?

Mr. WALSH.—He has just told.

A. The arrangement was that I was to pay it to Jakways & Faust for him.

Q. Why were you to pay it to Jakways & Faust for him? A. Because it was the arrangement.

Q. Why did you make that arrangement?

A. Because it was the most convenient thing for him and it was satisfactory to me.

Q. Did you send the money to Jakways & Faust?

A. I did.

Q. How long after? A. I am unable to say.

Q. Have you no recollection on the subject?

A. No, sir. It is included probably in these items that have been handed in here, these checks.

Q. And what is true of the Oliver E. Muchmore case applies as well to all the other Muchmores, in this respect, that the money was paid to them in payment for these exhibits offered in the case by Jakways & Faust rather than by yourself?

A. It was paid to them through Jakways & Faust; yes, sir.

Q. Now, isn't it true, Mr. Cobban, that these Muchmores had made a specific agreement with you through Jakways & Faust that they were to enter this land for you, and that as soon after receipt had been issued as may be, they were to deed to you?

A. No, sir, it is not true.

(Testimony of R. M. Cobban.)

Q. Isn't it true that you had instructed Jakways & Faust to see these people about the purchase of the timber on the claims that they afterwards took up?

A. No, sir, it is not true.

Q. Had you had any conversation with Jakways & Faust on the subject in regard to the Muchmore claims?

A. Not as to the purchase of any of their claims.

Q. What conversation had you had with them?

A. I had a great many conversation with Jakways & Faust during that summer; I don't recollect just what each one of them was.

Q. Why are you able to say, then, that you had not had a conversation with them relative to the purchase of these Muchmore claims?

A. Well, I know I had no conversation with them in regard to the purchase of those claims until the people had proven up.

Q. You had caused an estimate of their timber to be made?

A. I had, as I had of a great deal of other land in that neighborhood.

Q. When were you first informed about the timber that was on these claims that were afterwards sold to you by the Muchmores?

A. Well, I was informed of a large amount of timber up in there—I don't know whether it was particularly on their claims—along in the early summer of 1899.

Q. When did you find out, so as to be able to be in

(Testimony of R. M. Cobban.)

shape to instruct Jakways as to the amount that you were willing to pay?

A. Well, I can't say; I was not willing to make any offer for the purchase of those claims until the people had a right to sell them, and did not. I don't know just how long before that I became aware of the amount of timber on them, and what I would be willing to pay.

Q. Did you know of the fact that Jakways & Faust had loaned these people money?

A. I am not certain now whether I did or not.

Q. Did you know of the fact of a check for twelve hundred dollars having been given by Jakways & Faust to the Muchmores to pay for their land?

A. No, sir, I did not.

Q. By a check that was drawn by them on a bank in Missoula?

A. I didn't know anything about it.

Q. You had no conversation with them at all that they might want money to enable them to advance money to the Muchmores?

A. I don't recollect any such conversation.

Q. So that, as I understand it, you had no dealings with the Muchmores personally, or through any representative of your own to your knowledge until after the final proof had been made? A. No, sir.

Q. And what arrangements they had made with Jakways & Faust you didn't know?

A. I may have heard that they were going to borrow the money from Jakways & Faust; I may have known con-

(Testimony of R. M. Cobban.)

siderable about it, but at the present time I have no recollection of any details of the kind.

Q. Well, if you may have known considerable about it, can you give me any reason why your memory of this in the Muchmore cases is bad, when it seems to be pretty clear in some of the others?

A. Well, I had no interest in the Muchmore claims, and I don't know what their arrangements were with Jakways & Faust.

Q. That is, you don't know now? A. No, sir.

Q. But you may have known all about it and forgotten it? A. I had no interest in knowing.

Q. Now, will you please explain to me how it was that Jakways & Faust loaned them the lump sum of twelve hundred dollars at one time without your knowing anything about it, when they were buying the land for you?

Mr. BICKFORD.—We object to that, because the testimony is not that the money was loaned at the time that they were buying the land for the witness now upon the witness stand.

A. I know nothing about their business relations with the Muchmores, and what prompted them to make a loan to the Muchmores; it was a matter that did not concern me.

Q. Do you know, as a matter of fact, how much they did pay these Muchmores?

A. No, sir, I do not.

Q. Whether they paid them in cash or as a credit on their books, you don't know?

(Testimony of R. M. Cobban.)

A. No, sir, I do not.

Q. And as a matter of fact, they might not have done anything else than given them a credit on their books, and that credit might not have amounted to more than one hundred dollars in each case as far as you know? A. No, sir, I don't know.

Q. Do you know yourself how much you paid?

A. I know very near what I paid; I know in the neighborhood of what I paid.

Q. Very well. You said it was twelve hundred dollars in the case of the Oliver Muchmores?

A. I said about twelve hundred dollars.

Q. I show you the Guy Muchmore deed, being Complainant's Exhibit No. 156. Do you know how much the real consideration was in that deed?

A. About six hundred dollars.

Q. What makes you say about six hundred dollars, rather than the amount that is named in the deed; what data have you now in your possession which enables you to so testify?

A. Well, I know it was not far from that; I know that eight hundred dollars is not the true consideration.

Q. Have you any recollection as to when or where or what you paid Jakways & Faust for the money for that deed? A. No, sir, only in—

Q. Only in a general way? A. Yes, sir.

Q. Now, I call your attention to the A. F. Muchmore

(Testimony of R. M. Cobban.)

case, and ask you if you know what the true consideration was in that case?

A. I think that was about the same consideration.

Q. As in the other? A. Yes, sir.

Q. Six hundred dollars? A. Yes, sir.

Q. And is it true in that case as in the other that when and how you paid Jakways & Faust you do not know? A. Yes, sir, that is true.

Q. Now, Mr. Cobban, isn't it true that the reason why you don't know when or in what respect or how you paid Jakways & Faust is because of the fact that no such transaction took place at all?

A. No, sir, it is not the case.

Q. And isn't it true, because of the existence of the fact that Jakways & Faust had entered into an arrangement with these people by which they should make the entry and that they should advance the money for the purchase price of the lands and the necessary expenses and that they should immediately thereafter or as soon as may be, convey to you, and receive the sum of one hundred dollars and their expenses. Now, was not that the fact, and is not that the fact that you are unable to state when you paid Jakways & Faust?

A. No, sir, it is not the fact.

Q. And does not that account for the fact that you are utterly unable to say as to how much these entrymen did receive either from yourself or from Jakways & Faust?

A. No, sir, it is not the case.

(Testimony of R. M. Cobban.)

Q. And isn't it true that the locations that were made in the Ovando district, which were superintended by Jakways & Faust, were made under precisely the same conditions as those that were made under the supervision of Mr. Griswold, Mr. Jemison, Mr. Catlin and Mr. Pound?

Mr. WALSH.—That is not proper cross-examination. It calls for no fact, but asks the witness to institute a comparison between certain things and certain other things, which merely calls for a conclusion. You need not answer that.

Mr. MAYNARD.—I ask this witness if he does not know of his own knowledge that the same conditions existed in the two classes of cases, and that those conditions existed because of his instructions given to his lieutenants?

Mr. WALSH.—You won't have the witness answer.

Mr. MAYNARD.—I insist on an answer.

The WITNESS.—I refuse to answer.

The EXAMINER.—It seems to me that, as a specified fact is not called for by the question, he should not be compelled to answer.

Q. You refuse to answer?

A. I do in that shape, yes, sir.

Q. And isn't it true that Mr. Pound, who was working in your office at that time and is working for you

(Testimony of R. M. Cobban.)

now, had exact instructions from you as to just what he was to do along the line of advancing the money to these people, with the express understanding that they were immediately thereafter to convey to you?

A. No, sir, it is not true.

Q. In no case? A. No, sir.

Q. And the same is true with Mr. Smith?

A. It is certainly true that there was no such arrangement or instructions, I might say.

Mr. WALSH.—The question was whether you did not tell them that you had such arrangements with some of these entrymen?

The WITNESS.—The correct answer to that is no, sir.

Q. And Mr. Pound's instructions were to receive the mortgages instead of the deeds?

A. In some instances, yes, sir.

Q. And in no instances to receive the deeds?

A. I think my evidence in the case has been to the contrary from that; I think I have stated that in some instances, when the parties came to give that mortgage, that Mr. Pound might make them an offer for the purchase of their land; instead of taking the mortgages, that he could offer them a certain amount for their land, and if they accepted, well and good, and if not, he could take the mortgage.

Q. Was that an exceptional instruction, or was that a general instruction?

(Testimony of R. M. Cobban.)

A. No, sir, that was in certain cases.

Q. And not a general instruction?

A. Mr. Pound had no general instructions in regard to those things.

Mr. MAYNARD.—I think that is all. I desire to say that I am conscious of the fact that in this vast number of cases, I have overlooked certain matters that I have not called the attention of the witness to because I cannot now recollect them, and I desire simply to have it appear of record that I reserve the privilege to ask the witness, before the examination closes, certain questions that I have inadvertantly overlooked and that I cannot now recall.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Cobban, what kind of risk is it, from a business standpoint, to advance money to parties who desire to take up lands under the Timber and Stone Act, under an agreement with them that they shall execute a mortgage to secure the land immediately after making final proof?

Mr. MAYNARD.—I object to that question as not proper redirect examination, and simply calling for an opinion, and for that reason it is not competent for counsel to ask the question, and it is entirely immaterial and irrelevant. It is not an expert proposition.

A. I consider the risk very small.

(Testimony of R. M. Cobban.)

Q. Leaving out of consideration the transactions carried on by you in the purchase of lands entered under the Timber and Stone Act during the year 1899, had you ever made loans to persons desirous of using the money for the purpose of purchasing Government lands under the Homestead Act, for instance, or the Pre-emption Act or other acts?

A. Well, I cannot say that I did for the purpose of proving up, but I had made numerous loans on farm property, property that had recently been acquired from the Government.

Q. How did it come, Mr. Cobban, that for a few of these claims you paid as much as fifteen hundred dollars, when you could buy Forest Reserve scrip for somewhere between five and six hundred dollars, or thereabouts?

A. For the very reason that I was not able to secure with my scrip as good locations as I purchased for those sums. The land was better situated, and the choice selections had already been taken.

Q. Now, what means did you take, if any, of keeping yourself informed as to the acquisition from the Government by private individuals of lands in the neighborhood in which you were operating, on which there was desirable timber?

A. I kept a book, and from time to time I watched the newspapers, and any time that a notice came out in the papers of such land having been filed upon I immediately cut the notice out and pasted it in this book,

(Testimony of R. M. Cobban.)

and in that manner was fully informed of when those claims were taken up and when they would be proven up on, and it helped me a great deal.

Q. Have you got that book with you?

A. Yes, sir.

Q. This is the book that you hand me, to which you refer, is it? A. Yes, sir.

A. And the notices of final proof pasted in the book are the notices that you refer to? A. Yes, sir.

Q. Where did you get them?

A. I got them out of the Missoula paper and out of the "Garnet Mining News," and out of the papers that they were published in.

Q. And which of the entries mentioned in the bill of complaint are included in the various notices pasted in this book?

A. They are all included; I think, without any exception, they are all in there.

Q. Now, are there any notices pasted in the book, other than notices of claims mentioned in the bill of complaint? A. Yes, sir, a very large number.

Q. Now, are there notices of the final proof of any claims pasted in the book other than those which you acquired?

A. Yes, sir, quite a large number.

Q. What was your purpose, Mr. Cobban, in cutting out these various notices and pasting them in this book?

A. So that I would have information as to the peo-

(Testimony of R. M. Cobban.)

ple acquiring lands, so that if I was in the market for the purchase of lands I would know when they would be likely to be able to offer the land for sale, or when I might offer to buy them if I wanted to, and to keep in full touch with the business.

Q. Now, are there any other of the claims, notices of the final proof of which are pasted in this book, that you made any effort to acquire and were unable to purchase? A. Yes, sir, quite a good many.

Q. I wish you would refer, if you can, to a few of them.

A. Well, on the first page is the name of Charles E. Gilbert. I made an offer for his timber—made an estimate of it and made an offer for it after he had proven up. I offered him about six hundred dollars for his timber; I think six hundred dollars even was the amount that I offered him. It was afterwards sold to the Big Blackfoot Milling Company. Another one is Danile Mossburg. I had his claim estimated and made him an offer for it; I think I offered him in the neighborhood of one thousand dollars. His was a very desirable claim. He afterwards sold it to the Big Blackfoot Milling Company. Another one is O. Opsata; I don't remember having seen that party at all. Another is Thomas Morris; I made him an offer for his timber but it was not accepted, and I think he still holds it.

Q. Well, that will be sufficient, Mr. Cobban.

(Testimony of R. M. Cobban.)

A. And quite a good many others here.

Q. Now, Mr. Cobban, in the way that the lumbering business is conducted in that section of the country, what possibility is there of a man carrying on a lumbering business with profit, when he owns only one hundred and sixty acres?

A. There is very little. The market is very limited in that section of country, the local market, and he would absolutely be unable to saw his lumber there and haul it to a market, and the cost of getting roads, etc., would shut out anyone from the possibility.

Q. So that you evidently pasted these notices in the book in contemplation, then, that when these people did make final proof they would very likely be desirous of selling the claims?

A. I had expected that very likely those claims would be eventually offered for sale.

Q. I understand you caused estimates to be made upon claims other than those mentioned in the bill of complaint and other than those which you eventually purchased?

A. On probably three or four times the amount of ground that I did purchase.

Q. And how did you come to do that?

A. Simply to become informed of the character and the amount of timber on the different tracts of ground that might eventually be in the market.

Q. Now, speaking of the matter of loaning money to parties with which to make final proof upon lands un-

(Testimony of R. M. Cobban.)

der the Timber and Stone Act, and the fact that you refused to make loans to some of the parties upon selections that had been made, I wish you would state, Mr. Cobban, what the lowest amount of timber on any quarter section was that would justify you in making a loan sufficient to acquire the title to the land from the Government.

A. Well, in a general way I will state six hundred thousand feet, but I did go as low as five hundred thousand; five hundred thousand would justify me in making such a loan.

Q. And if it had five or six hundred thousand feet on it, you deemed that adequate security for the advancement of whatever money was necessary to acquire?

A. Yes, and I might say further that even a piece with a smaller amount than that, if it was very nicely located, right on the river, would be adequate.

Q. You did eventually sell the timber lands mentioned in the bill of complaint at the rate of how much per thousand for the timber on it?

A. One dollar and twenty-five cents per thousand.

Q. You spoke about certain deeds that were in escrow in the bank or elsewhere. What were the circumstances that resulted in the placing of those deeds in escrow; how did you come to have them there?

A. Those were lands that I had made an offer on and my offer had been accepted, but I had stated that I was

(Testimony of R. M. Cobban.)

unable to make the payment at that time. Sometimes I would make partial payment and ask them to put the deed in escrow for a certain length of time. That was simply an option to me for the purchase of them. If I failed to avail myself of taking up those deeds in the length of time that was mentioned on the envelope, the deeds reverted to the people from whom I purchased.

Q. So that, as I understand you, those deeds referred to lands upon which you had options to purchase for a certain length of time? A. Yes, sir.

Q. And was that the extent to which you held options on any of the lands, Mr. Cobban?

A. Oh, no; I had in numerous instances just a written option for so many days or so many months, of purchase. I would pay down twenty-five dollars or fifty dollars, something of that kind, for an option for some specified time.

Q. Without putting the deeds in escrow?

A. Without the deeds in escrow, yes, sir; that was done in numerous cases.

Q. Reference was made to Mr. Pound, as being in your employ, Mr. Cobban. What is Mr. Pound doing now?

A. Well, he is just around my office and showing property and assisting what he can there in various ways.

Q. What has been his condition of health?

A. He is in very poor health. He is an old gentleman, and he is lame, and at times—there was about six

(Testimony of R. M. Cobban.)

months that he was not able to put a shoe on within the last year, and a good deal of the time he was confined to his home.

Whereupon a recess was taken until 2 P. M.

Wednesday, July 16th, 1902, at two o'clock P. M.

Hearing resumed pursuant to recess.

The witness, R. M. COBBAN resumed the stand and was cross-examined as follows:

(By Mr. MAYNARD.)

Q. I would like to ask you, Mr. Cobban, if you are now prepared to comply with the demand that was made upon you for the production of the original contract between yourself and Mr. Griswold?

By Mr. WALSH.—He answered that the other day. That is no recross-examination of the witness.

By Mr. MAYNARD.—I know it isn't recross-examination, but I meant to ask him if he was willing and ready to comply with the demand. I know that counsel answered for Mr. Cobban the other day.

Q. You refuse to answer that, Mr. Cobban?

A. That is my attorney's answer.

Q. Your attorney's answered for you?

A. Yes, sir.

Q. And by their instructions you refuse both to answer and to say whether you will produce the original agreement or not. A. I haven't it.

Q. Well do you know where it is?

(Testimony of R. M. Cobban.)

A. No, sir, I do not.

Q. Who did you give it to?

A. I think it was in the possession of Marshall & Stiff, the last thing I know of it.

Q. And so far as you know it is there now?

A. I don't know where it is.

Q. You haven't seen it since? A. No, sir.

Q. And is the same true of the account that existed between you and Mr. Griswold that was delivered over at the time of the settlement of the civil suit?

A. No, sir.

Q. Where is that?

A. Among my papers somewhere.

Q. Well, will you produce that?

By Mr. WALSH.—We make the same answer with reference to that as we did for the demand for the original agreement heretofore referred to.

Q. Well, what is your answer?

A. The answer is that I don't recognize the necessity of getting the papers that you direct us to get.

Q. Or of producing them on the demand that has been made?

By Mr. WALSH.—Or producing them on any demand.

Q. And do I understand you to refuse to produce it because of the instructions of your attorney?

A. Yes, sir, I don't recognize any demand.

Q. And what have you to say in regard to the deeds that are called for?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—We make the same answer relative to the deeds, that we did to the demand for the other papers. When proper steps are taken to have us bring the papers into court, they will be forthcoming.

Q. And you refuse to produce them because of the instructions of your attorney?

A. Well, without a proper demand, yes, sir.

Q. Well, I again demand that you produce the articles called for in the written demand that was served upon you previous to the adjournment in May, and that was again served upon you a day or two ago here, and which is a part of this record.

Q. Your counsel asks you if you had made loans on farm property after it had been acquired from the Government—recently acquired from the Government, outside of this transaction, and you said, yes.

A. Yes, sir.

Q. What was the character of those loans?

A. Well, I made a great many loans of different characters and different natures. Generally the loans were agricultural in character.

Q. Where the parties had gotten onto them and were in possession, and intended to make farms of them?

A. Well, there was some farming lands, yes, sir.

Q. For what purpose were the loans made?

A. Well, for various purposes. Sometimes for improvements in the property, and sometimes for other purposes. I cannot tell you what the purpose was.

Q. Was it your own money that you loaned?

(Testimony of R. M. Cobban.)

A. Sometimes it was, and sometimes it was negotiated for others.

Q. Can you recall a single instance where you made what would be called a farm loan for other people, that you didn't secure the same by note and a mortgage, accompanying it?

A. No, sir, I usually took a note or a mortgage.

Q. And as a business man, and as a business proposition that was always expected, was it not?

A. Just as soon as a person had security to give.

Q. What was that?

A. Just as soon, I say, as a person had security to give, certainly.

Q. And the mortgage would be given and duly recorded? A. Yes, sir.

Q. And after being so recorded, would be left with you, with the other papers in the case, or handed over to the man for whom you made the loan?

A. Yes, sir.

Q. And did you make a loan where the terms were entirely indefinite as to the time of payment and without being secured by a mortgage and a note?

A. Oh, yes.

Q. What is that? A. Yes, repeatedly.

Q. What kind of loans were they?

A. Well, they were not long time loans, where I would make a loan of that kind.

Q. Those loans of the character where the man would step into your office and ask you for a quarter?

(Testimony of R. M. Cobban.)

A. No, sir.

Q. What is that? A. No.

Q. Well, weren't they of that general character?

A. I have loaned hundreds of dollars to people without any security; without any note or mortgage, and sometimes indefinitely.

Q. I mean outside of the loans that you have made in the case we are now considering.

A. Yes, sir, outside of the case here in this bill of complaint.

Q. What were those loans?

A. Loans of accommodation.

Q. Well, were they made to strangers?

A. Not necessarily strangers, people that I knew.

Q. Was there ever a case in your life where you made a loan of a hundred dollars or over to a stranger, where the term was indefinite, and not secured by a note or a mortgage or anything except word of mouth.

A. Well, perhaps not with an utter stranger.

Q. Or to comparative strangers?

A. I have loaned to people that I didn't know very well a good many times.

Q. Can you recall one such instance in your life?

A. Yes, sir, I can remember several of them.

Q. Well, just name one if you can.

By Mr. WALSH.—Well, that is not recross-examination and we object to it upon that ground.

By Mr. MAYNARD.—I thought it was.

Q. Can you name one? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. Well, name one. A. William Beskovie.

Q. Well, Beskovie, how much did you loan him?

A. One hundred dollars.

Q. When?

A. Well, about four years ago; and I made him another loan three years ago.

Q. Who was he?

A. Well, he was a man that was called "Coyote Bill," in our part of the country. This is a nickname. He is a sort of a trapper and a hunter. He has a little strawberry patch up at the head of Rattlesnake.

Q. Well, for what purpose did you loan it to him?

A. I loaned it to him for his accommodation.

Q. What did he want it for?

A. I may have known what he wanted it for.

By Mr. BICKFORD.—We object to that upon the ground that it is not proper recross-examination and it is simply enlarging the record, and causing it to be unduly and unnecessarily extended.

Q. Now, you talked about these deeds that were left at the bank in escrow for you and call them options. As a matter of fact, weren't those deeds left there after the transaction had been fully completed, and the deeds drawn, executed and delivered to the bank? And the sole condition was that they should be delivered to you, and the title passed upon the payment of the money that was due on them? A. Yes, sir.

Q. Well, do you call that an option?

A. I certainly do. If I had failed to pay the money

(Testimony of R. M. Cobban.)

that was due at that time, the conditions were such that the deeds were to be delivered to the maker.

Q. And that is the same kind—you call that an option the same as it would be if you were—if you went out to a man and said, here I will give you twenty dollars, and you agree in writing to convey to me within three months, and if you do, you are to get the money.

A. That is one kind of an option.

Q. And the other is another kind of an option?

A. They are both options, a deed in escrow is an option to purchase.

Q. Oh, all right. And you referred in particular to the notice of Charles E. Gilbert and Daniel Mossburg and Thomas Morris, as cases where you failed to purchase from them.

Q. Were there many others?

A. Yes, sir, I had a good many others.

Q. Were they made under the stone and timber law?

A. Most of them were.

Q. How many would you say, that where you had failed to purchase, because you couldn't agree upon the price. How many of such cases were there do you think?

A. Well, I would say probably a dozen.

Q. And how many did you succeed in purchasing over and above those that are named in the bill of complaint?

A. Well, I couldn't tell you.

Q. Seventy-five? A. I don't know.

Thereupon Mr. Cobban was excused from the stand,

(Testimony of R. M. Cobban.)

but was recalled, and examined directly again as follows:

(By Mr. WALSH.)

Q. Mr. Cobban, I wish you would tell us whether you were present at the taking of the testimony in the case of Griswold vs. Cobban before S. G. Murray, a referee at Missoula? A. I was.

Q. And did you hear the testimony of Mr. Griswold in that case? A. I did.

Q. Have you examined this document which purports to be a transcript of the testimony taken at that hearing? A. Yes, sir, I have.

Q. I wish you would state whether you have examined those parts of the transcript concerning which Mr. Griswold has testified.

A. I have.

Q. Where did you get this transcript of the testimony, Mr. Cobban?

A. That was furnished me by Mr. Glenny, the stenographer who took it.

Q. And is a transcript of the testimony?

A. Yes, sir.

Q. Now, refreshing your recollection from the transcript of the testimony, I wish you would state whether at that hearing, the witness Griswold testified, as he was asked by myself, a few moments ago, if he did on that occasion so testify?

By Mr. MAYNARD.—I object to the question, and to

(Testimony of R. M. Cobban.)

its being answered, for the reason that it is entirely incompetent for a witness to undertake to give testimony on that subject; that the best evidence of the fact is the official stenographer and his notes. That a portion of that paper writing that the witness has before him is already detached and loose, and how many more pages have been taken off nobody knows. And I insist that if any such testimony is to be given as this upon this subject, that the stenographer who took the testimony on that occasion with his notes shall be produced in order that we may have an examination made as to the fact, and as to what testimony was given by Mr. Griswold.

A. Yes, sir.

By Mr. MAYNARD.—We move to strike out the answer of the witness for the reasons stated in the objection last hereinbefore made, and upon the grounds therein stated.

Recross-examination.

(By Mr. MAYNARD.)

Q. Do not the transactions that Mr. Walsh refers to appear in the account which you have in your possession, and which you have refused to produce?

By Mr. WALSH.—We object to the question upon the ground that it is not proper cross-examination; he being interrogated simply as to whether Mr. Griswold did or did not testify as he was asked.

Q. Now, answer the question, Mr. Cobban.

A. I think only as to one item.

(Testimony of R. M. Cobban.)

Q. What is that?

A. I think it has the item of $82.50, that is in the Thomas Pelky matter; and my recollection was that he made a statement as to what they consisted of.

Q. You say it does appear?

A. I think it does appear.

Q. Will you produce it so that we may inspect it, and be able to ask you questions concerning that.

By Mr. WALSH.—We make the same answer now as heretofore to this request. We insist that it has nothing whatever to do with the matter, and concerning the account of the witness, and that it is not proper cross-examination, and we therefore refuse to comply with the demand for that reason.

By Mr. MAYNARD.—I desire to state that I will bunch the demands that have been made upon Mr. Cobban, and the defendant's attorneys in this case, from the beginning to the end, for the production of these papers; and shall apply to the Court the first opportunity for an order upon the Court that these papers be produced, in order that we may have an opportunity to cross-examine Mr. Cobban on this subject.

By Mr. WALSH.—That is what we have been expecting you to do all the time.

By Mr. BICKFORD.—I wish you would also state that counsel for the defendant asks what demand, if any, he has ever made of the defendant, or the production of any papers.

(Testimony of R. M. Cobban.)

By Mr. MAYNARD.—I will simply say that the record will show that at four or five different times, efforts have been made to have the papers referred to produced, and demands have been made upon the defendant, and his counsel, and Mr. Cobban, for the production of these papers; and at some time or other, before we get through with this case, we will get them.

Thereupon counsel for the respective parties stated that Mr. Cobban might be excused from the stand.

ROBERT M. COBBAN,

Subscribed and sworn to before me this 29th day of July, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,
Complainant,
vs.
WILLIAM A. CLARK,
Defendant.

Certificate of Master in Chancery.

To the Judges of the Above-entitled Cause:

I do hereby certify that under the order of said Court, made and entered in said cause, upon the first day of

October, 1901, and in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein, at my office, in the city of Helena, in said District; that Charles H. Cooper, and George H. Macdougall, heretofore appointed stenographers, took the testimony of the witnesses in shorthand, and transcribed the same; that the following named persons personally appeared before me, and were duly sworn to testify to the truth, the whole truth and nothing but the truth, to wit: S. C. F. Cobban, Charles H. Cooper, Andrew J. Davis, I. G. Denny, Henry J. Faust, C. L. Griswold, George H. Macdougall, Dan McGillis, Mrs. Jennie Mize, J. H. T. Ryman, Henry C. Stiff, Emerson B. Weirick, and C. C. Willis.

That said witnesses were examined by the counsel for the respective parties, and their testimony is contained in this volume, numbered ten, on pages 5502, to 5908 inclusive; that said witnesses, S. C. F. Cobban, C. H. Cooper, I. G. Denny, H. J. Faust, George H. Macdougall, and C. L. Griswold carefuly read over, corrected, subscribed and verified their said testimony before me at the times hereinafter mentioned; and that under the stipulation of the parties I read and corrected, and certified that the testimony of the witnesses, Andrew J. Davis, Dan McGillis, Mrs. Jennie Mize, Henry C. Stiff, E. B. Weirick, C. C. Willis, and J. H. T. Ryman, have been correctly transcribed.

(Testimony of H. J. Faust.)

Complainant's Exhibit No. 313 and Defendant's Exhibits Nos. 314 and 315, described in the index hereto, are herewith filed.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Dated this 23d day of August, 1902.

Thursday, May 1st, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

H. J. FAUST, a witness called in behalf of the defendant, having been first duly sworn, testified as follows;

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Faust, where do you live?

A. At Ovando, Montana.

Q. How old are you? A. Thirty-five.

By the EXAMINER.—Let him give his full name.

By the WITNESS.—Henry J. Faust.

Q. What business are you engaged in there?

A. General merchandising, stock-raising, and so forth.

Q. What official position, if any, do you hold?

A. I am postmaster at Ovando.

Q. How long have you been engaged in that business there? A. A little over nine years.

Q. Now, Mr. Faust, were you in the same character of business during all that time? A. Yes, sir.

(Testimony of H. J. Faust.)

Q. How far is Ovando from the nearest railway station?

A. By the mail route, forty miles to Drummond, Montana.

Q. Is that the route usually pursued in and out from there? A. Yes, sir.

Q. What part of the business, Mr. Faust, do you yourself have the particular charge of?

A. The buying of the goods and taking care of the credits and debits and the bookkeeping part.

Q. Who is your partner?

A. Charles A. Jakways.

Q. And what particular branch of the business does he look after generally?

A. He looks after the ranch and stock, and other outside details.

Q. What is the character of the country about Ovando, and the chief occupation of the people in that vicinity?

A. Ranching, principally, and stock-raising.

Q. And the character of the country about there, Mr. Faust?

A. The character of the country—well, there is lots of timber in there, and some good valley lands that can be utilized for hay and grain purposes.

Q. And what character of timber is there about there?

A. Mostly pine timber and fir, and some tamarack.

Q. Now, during the year 1899, did you know of any

(Testimony of H. J. Faust.)

operations, Mr. Faust, by Mr. Cobban in your section of the country? A. Yes, sir.

Q. What business was he carrying on there; what was he doing there?

A. He was buying timber lands as near as I could understand.

Q. Well, what connection or relation or agency, or otherwise, existed between Mr. Cobban and your firm?

A. None whatever.

Q. Did you at any time negotiate for Mr. Cobban the purchase of any timber lands in your locality?

A. Yes, sir.

Q. Under what arrangement was that done, Mr. Faust?

A. He purchased that some lands—well, parties that had timber lands for sale asked us to sell them for them, if we could.

Q. What arrangement, if any, was entered into between your firm, so far as you know, or between yourself and Mr. Cobban, to the effect that you should procure or assist him and Mr. Griswold to procure parties to take up timber lands in your locality, under the Stone and Timber Act, and after they had taken them up, to convey to Mr. Cobban and receive a hundred dollars from Mr. Cobban for their deed?

A. There was no arrangement whatever.

Q. Of that character?

A. Of that character.

(Testimony of H. J. Faust.)

Q. What do you know about any arrangement of that character being made by anybody?

A. I know of none.

Q. What do you know about any person during the year 1899, or any other time, having taken up any lands under such arrangements?

A. I don't know of any.

Q. Do you know one Chauncey L. Griswold?

A. I do, yes, sir.

Q. What arrangement of that character did you make with Chauncey L. Griswold ,or do you know of, having been made with Chauncey L. Griswold?

A. I know of no arrangement.

Q. And you would have known of such things yourself? A. Yes, sir.

Q. You made none such yourself? A. No, sir.

Q. What moneys, if any, did Mr. Cobban leave with you or with your firm, for the purpose of carrying out any such arrangement as that?

A. None, whatever.

Q. It has been testified to here by Mr. Griswold, that Mr. Cobban said to you, or to your partner, in your presence, that he was making arrangements by which people should settle—should enter timber lands and then convey them to him, he to furnish all the money necessary to pay for the land, and other expenses, and to pay them one hundred dollars, and that he said to you that he would leave some money with you, and if it was

(Testimony of H. J. Faust.)

not sufficient, that you should pay it out of your own funds and he would reimburse you. What have you to say as to such transaction having taken place?

A. No such transaction with Mr. Cobban or to that effect.

Q. Do you know one Elijah W. Hoyt, living in your neighborhood, Mr. Faust? A. Yes, sir.

Q. And his wife, do you remember her name?

A. Yes, sir, Charlotte S. Hoyt.

Q. What, if anything, did you have to do with the entry of any claims by these people under the Stone and Timber Act?

A. Well, nothing more than they borrowed some money from us, presumably for that purpose.

Q. To take up the land?

A. Yes, sir, to take up these lands.

Q. And do you know anything about the transaction by which they subsequently conveyed the land to Mr. Cobban?

A. Well, I don't know as I do very much, any more than I understood that they afterwards conveyed to him.

Q. Well, do you know anything yourself; did you take part in any negotiations which resulted in the transfer of the land, Mr. Faust?

A. I was there at the time the deed was received, if I remember right.

Q. Well, did you conduct the negotiations, Mr. Faust?

A. Well, in a way I did.

(Testimony of H. J. Faust.)

Q. Do you remember what it was they got for their claims?

A. Not positively; I think seventeen hundred dollars, or in that neighborhood.

Q. Now, you said they borrowed some money from you, presumably with which to make their final proof upon the land. What do you know about that money, Mr. Faust?

A. Nothing more than they said that they wished to borrow this money for that purpose; whether they used it for that purpose, of course I am not—I don't know.

Q. Well, under what arrangement, if any, did you have with Elijah W. Hoyt or Charlotte S. Hoyt at the time this money was borrowed, or at any other time, that upon the making of final proof they should thereafter convey the land to Mr. Cobban or to anybody else?

A. None whatever.

Q. Do you remember how much money you loaned them, Mr. Faust, on the occasion you speak of, when they said they wanted it to make final proof upon their timber claims?

A. Not exactly that, referring to the talks, but I think seven or eight hundred dollars.

Q. Have you got your book here?

A. Yes, sir. (Witness produces book.)

Q. Well, I wish you would refer to it.

A. Eight hundred dollars.

By Mr. MAYNARD.—What page is that, Mr. Faust?

By the WITNESS.—405, in our ledger.

(Testimony of H. J. Faust.)

Q. Did Mr. Hoyt ever transact any business with you prior to that time, or had he ever done so?

A. Yes, sir.

Q. During what period had you been engaged in business transactions with him?

A. Well, ever since we started in business there.

Q. What business is he engaged in, or was he at that time? A. Stock-raising.

Q. What note, or other evidence of the loan made to him, did you taken from him, Mr. Faust?

A. We took his promissory note at the time.

Q. And do you remember when the note was surrendered?

A. Why at the time that he deeded his property, if I remember rightly, that is his timber, I should have said.

Q. He never conveyed the land? A. No, sir.

Q. But sold the timber?

A. Sold the timber, yes, sir.

Q. Now, at the time that Mr. Hoyt conveyed, Mr. Faust, was he paid in cash, or did it simply pass as a credit on the account with him?

A. He was paid some cash, and a credit to the amount that he wished should be placed to his credit.

Q. Well, he had an account with you at that time?

A. Yes, sir.

Q. Now, do you know one Edward J. Doney, whose claim is made the subject of inquiry here?

A. Yes, sir.

Q. And his wife, Martha M. J. Doney?

(Testimony of H. J. Faust.)

A. Yes, sir.

Q. How long did they live in that neighborhood?

A. I don't know; they were there when I came into that valley.

Q. What business were they engaged in?

A. Stock-raising and farming.

Q. What business dealings had you had with them at the time they took up this timber and stone claim?

A. Well, they had always dealt with us.

Q. Now, going back to the Hoyt claims a moment, Mr. Faust. Have you any recollection as to the time when you loaned the money to Mr. and Mrs. Hoyt, with reference to the time that they made final proofs upon the land?

A. I was—I hardly understand that question, Mr. Walsh.

Q. Do you know how long it was before they made their final proof on the land, that you loaned them the money with which to make final proof?

A. No, sir, I have no recollection in regard to that.

Q. You have no recollection as to how long before it was? A. No, I couldn't say.

Q. Now, you say you have dealt somewhat extensively with Mr. Doney? A. Yes, sir.

Q. Now, what has been the course and nature of your dealing with Mr. Doney?

A. Well, we have very often loaned him money; we sold him goods on credit to any sum that he wished to purchase.

Q. And how, if at all, was the account made up by

(Testimony of H. J. Faust.)

him? How was he running the account with you? In what way would it come about that the account would be eventually balanced?

A. If he sold any products or cattle, why he would pay in on account whatever amount he wished to.

Q. Are you—did you deal with them in any products of any character? A. Yes, sir.

Q. What did you buy?

A. Well, cattle and farm products.

Q. Now, did—what occasion, if any—what connection did you have with the entry made by Mr. Doney and his wife, Mr. Faust, if any?

A. None other than Mr. Doney borrowed some money from us that he said he wished to use to make final proof on timber claims for himself and his wife.

Q. And do you remember how much you loaned him?

A. I think I can find out. Between the 14th and the 19th of August, 1899, we loaned him $632.00.

Q. And is it your recollection that this money that you speak of as having been loaned to him, was loaned to him to make proof on these lands? A. Yes, sir.

Q. Well, have you any—what is your recollection now as to whether you took any note or mortgage from Mr. Doney evidencing this loan that you made to him?

A. My recollection is that I took his note on account for that amount at the time.

Q. And when, if at all, was the note surrendered?

A. I think his note was surrendered about the first of January, 1900.

(Testimony of H. J. Faust.)

Q. About the first of January, 1900?

A. Yes, sir.

Q. Now, what arrangement did you have with Mr. Doney or his wife, at the time that this money was so advanced to them, or at any other time, that they were to convey this land to Mr. Cobban after they had made final proof upon it? A. No arrangements whatever.

Q. What, if anything, do you know about the fact of Mr. Doney—Mr. and Mrs. Doney, conveying their land to Mr. Cobban?

A. Well, they didn't convey their land that I know of. At least not all of it, because, as I understood the transaction at the time, they sold or conveyed to Mr. Cobban the timber on this homestead, and also together with the timber that was on their timber claims.

Q. Your recollection and understanding about the matter is that they didn't convey their timber claims at all?

A. They might have conveyed the timber claims, but not the homestead, I am satisfied.

Q. But they did convey, as you understand it, the timber on the homestead? A. Yes, sir.

Q. What, if anything, did you have to do with the negotiations that resulted in the conveyances?

A. Well, Mr. Doney wished me to sell the timber on their respective rights, if I could do so.

Q. What did you do?

A. I negotiated with Mr. Cobban.

(Testimony of H. J. Faust.)

Q. Well, now, when was it that Mr. Doney empowered you to sell the timber for him?

A. I couldn't give any dates.

Q. I mean with reference to the time that he made the final proofs, Mr. Faust?

A. Well, it must have been shortly after.

Q. Well, what arrangements of that character did you have with Mr. Doney at any time prior to the time that he made his final proof?

A. None that I can now remember.

Q. Do you know one Albert Muchmore living in that vicinity, Mr. Faust? A. That must be A. F.?

Q. Yes, sir.

A. Yes, sir, I know him.

Q. And Guy W. Muchmore? A. Yes, sir.

Q. And Oliver E. Muchmore? A. Yes, sir.

Q. And Elizabeth E. Muchmore? A. Yes, sir.

Q. What business are those people engaged in?

A. Well, they have—they are ranching and stock-raising.

Q. To what extent, if at all, had they dealt with you prior to the year 1899?

A. They had always dealt with us more or less for several years prior to that.

Q. Now, what arrangement, if any, did you have with any of these people, to the effect that they should take up timber claims, and that Mr. Cobban, through you, should furnish the money requested, or requisite to acquiring title to the same, and then that they should convey to

(Testimony of H. J. Faust.)

Mr. Cobban for a hundred dollars over and above their expenses? A. No arrangement whatever.

Q. What conversation, if any, did you have with Mr. Griswold concerning the entries of timber and stone claims, made by these people, or any of them, Mr. Faust?

A. I don't remember of having any conversation with Mr. Griswold on the subject.

Q. I wish you would state whether you didn't say to Mr. Griswold that these people whom you designated as the Muchmores, were indebted to you, and that they would be glad to take up lands and convey them to Mr. Cobban for a hundred dollars ever and above their expenses?

A. There was no such statement whatever.

Q. What have you to say as to saying to Mr. Griswold, in a conversation concerning entries made by persons under the Stone and Timber Act, that you were looking after the Muchmore claims?

A. Not that I know of; no such conversation.

Q. Now, do you remember having loaned any money to these people, Mr. Faust, with which to make proof upon their claims?

A. I do.

Q. To which of them did you loan any money?

A. I think I loaned money to all of them.

Q. To all of them?

A Yes, sir.

Q. And do you remember whether or not you took any note, promissory note, from any of these parties?

(Testimony of H. J. Faust.)

A. My recollection is that I did, although I wouldn't be positive.

Q. Well, why are you unable to say positively about the matter, Mr. Faust?

A. Well, I took notes, if any, on open accounts, and kept on record of them after the notes were surrendered.

Q. I don't understand what you mean by saying that you took the notes upon open account.

A. Well, I mean by that was, instead of making out a bill's receivable account, the amount was charged up to their respective accounts, and notes taken for the amount, whatever they wished to borrow.

Q. That is to say, whether they gave a note or not, the account was charged with the amount?

A. Yes, sir, that is the way. I kept it; that is the way I kept all of them, and all the entries of that nature.

Q. Well, now, how did it come about, Mr. Faust, that you loaned money to these people at these times? Is that a part of your business?

A. We are in the habit of loaning money to anyone that we feel is willing to pay it back at a specified time.

Q. Well, are you engaged in a little banking business, Mr. Faust?

A. Not exactly, although we loan money to parties that come and ask for it, if we have it; every week probably in the year, larger and smaller amounts.

Q. Well, is that business in relation to the general conduct of your mercantile business. In other words, do you loan only to your ordinary and usual customers, or

(Testimony of H. J. Faust.)

do you loan to persons who do not deal with you in your store or otherwise?

A. I cannot say that we have loaned to any outside of our customers.

Q. What I should like to know about this matter, Mr. Faust, is, was this loaning money to your customers an incident to your business, or were you carrying it on as a business itself?

A. No, I would call it an incident to the mercantile business, for the reason that we very often accommodated our customers with short loans.

Q. What is the nearest place to which people residing in that neighborhood could resort for loans, for the purpose of carrying on their business, if they were obliged to have money?

A. Well, I presume Deer Lodge and Missoula would be the nearest points.

Q. How far are they away?

A. In a direct line, Missoula is sixty miles, and Deer Lodge, I guess, is about seventy miles; I don't know exactly the distance.

Q. Well, now, I wish you would tell us, Mr. Faust, what connection, if any, you had with the transfer by which Oliver E. Muchmore conveyed his land to Mr. Cobban?

A. Oliver E. Muchmore sold his claim directly to Mr. Cobban, but the deed was signed in my presence, on account of Mrs. Muchmore not being with Mr. Muchmore, in Missoula, at the time that the deal was consummated.

(Testimony of H. J. Faust.)

Q. Is Elizabeth A. Muchmore the wife of Oliver E. Muchmore? A. Yes, sir.

Q. Well, you say that the negotiations were conducted directly between Mr. Muchmore and Mr. Cobban? A. Yes, sir.

Q. What do you know about that?

A. Only that Mr. Muchmore told me so at the time.

Q. At the time he was executing the deed?

A. At the time he signed the deed in my presence.

Q. And at that time what did he say as to when and where the negotiations for the sale of the property were conducted? A. In Missoula, I understood.

Q. And when?

A. Well, it must have been about a day or two before he executed the deed.

Q. Well, what did he say about it, Mr. Faust?

A. As near as I can remember, he said he went down to Bonner to convey his timber to the Big Blackfoot Milling Company, and that he was delayed there for something like two days, waiting for the head man, or the timber-buying man of the firm, to arrive at Bonner; and while he was waiting—

By Mr. MAYNARD.—To which question and the answer that is now being given by the witness, I object, upon the ground that it is purely hearsay and incompetent to sustain any of the averments contained in the answer of the defendant, or to disprove any of the allegations contained in the complainant's bill of complaint.

(Testimony of H. J. Faust.)

By Mr. WALSH.—We offer this as a part of the case of the defendant, and as a part of the acts and declarations accompanying the execution of the deed of Oliver E. Muchmore and wife to Mr. Cobban, and as part of the res gestae of that transaction.

Q. Proceed, Mr. Faust.

A. That while waiting, one, William Boyd, came down the Big Blackfoot river to go to Missoula, and asked Mr. Oliver E. Muchmore to go down with him, and Mr. Oliver E. Muchmore said to him that he was waiting to negotiate with the head man of the Big Blackfoot Milling Company for the sale of his timber claim, and didn't care to leave Bonner at that time. So William Boyd told him that he could come back in a few hours. Afterwards, while in Missoula, said Oliver E. Muchmore got acquainted with Mr. Cobban and that the deal was consummated at that time for the sale of his timber to Mr. Cobban.

Q. And this explanation he made to you, as I understand you, when he came to you to have the deed executed—the deed of himself and his wife?

A. Yes, sir.

By Mr. MAYNARD.—On behalf of the Government, I now move to strike out of the record the testimony that this witness has given in regard to what Oliver E. Muchmore told him, for the reason that it is hearsay and does not prove or tend to prove any of the aver-

(Testimony of H. J. Faust.)

ments of the defendant's answer, or to disprove any of the allegations of the complainant's bill of complaint.

Q. Now, what, if anything, do you know about the conveyance or conveyances by Oliver E. Muchmore and Guy W. Muchmore and Albert F. Muchmore?

A. Well, they acknowledged the deed before me at Ovando.

Q. What, if anything, did you have to do with the negotiations that resulted in the sale of the land to Mr. Cobban?

A. Well, according to their wish, I acknowledged the deed for the sale of that timber to Mr. Cobban.

Q. And when, with reference to the time that they had made final proof, did they authorize you to negotiate for the sale of the timber to Mr. Cobban?

A. They authorized me to sell their timber to anyone that I could, shortly after.

Q. After what?

A. After they had made final proof, after they had made their final proof.

Q. What, if any arrangements was there between you before they had made their final proof, in regard to the sale of their land? A. None whatever.

Q. Do you know Alfred Stewart and Nels O. Opsata?

A. Yes, sir.

Q. What business are they engaged in?

A. Stock-raising and ranching.

Q. How long have they been engaged in that business in your locality?

(Testimony of H. J. Faust.)

A. Mr. Nels O. Opsata was there when I came to that valley, and Mr. Alfred Stewart, I think, came there the year after.

Q. To what extent, if at all, have they dealt with you? A. Quite extensively.

Q. What arrangements did you ever have with them or either of them, to the effect that they should take up timber claims and convey the same to Mr. Cobban, or the timber on them, and receive from him a hundred dollars or any other sum, he to furnish the money with which they were to make final proofs?

A. None whatever.

Q. Or otherwise? A. No, sir.

Q. And what arrangement, if any, did you have with them to the effect that Mr. Cobban would furnish the money necessary to acquire title to the land, and that they should convey the timber to him and reserve the land themselves? A. None whatever.

Q. Do you remember having loaned any money to those people with which to make their final proof, Mr. Faust? A. Yes, sir.

Q. Do you recall now the circumstances of advancing it to them as it—have you any independent recollection of it, I mean?

A. No, nothing more than what the books show, if they borrowed the money from us.

Q. And what, if anything, did you have to do with the conveyance made by them subsequently, of the tim-

(Testimony of H. J. Faust.)

ber growing upon their timber and stone claim, to Mr. Cobban, or saw and tie timber?

A. I don't remember in either case of ever having anything to do with it.

Q. Have you no recollection of going to Mr. Stewart's house, Mr. Faust, at the time that he executed the deed?

A. Yes, sir, I went down there and took his acknowledgment, and also that of Mrs. Stewart's.

Q. At whose request?

A. One Mr. Smith, I think that was his name, from Missoula.

Q. Now, whose money was this that you loaned to these people, Mr. Faust?

A. It belonged to the firm of Jakways & Faust.

Q. Was this the only instance in which you ever loaned any money to any persons with which to make final proof upon lands in your vicinity?

A. No, sir.

Q. Can you now recall any others?

A. Yes, sir, there was Mr. Louis S. Jakways and Cora Y. Faust.

Q. Do you recall the case of Mrs. Hawthorne, Mrs. May Hawthorne? A. Yes, sir.

Q. Do you remember whether your firm loaned any money to her with which to make final proof?

A. Well, those negotiations were entirely with her brother, Mr. Charles A. Jakways.

(Testimony of H. J. Faust.)

Q. Well, can you state whether the money was loaned by Mr. Jakways out of his personal funds, or by —or whether they were loaned by your firm, the firm of Jakways & Faust.

A. As near as I can now tell, they were loaned on Mr. Jakway's personal funds.

Q. Well, these loans were all made during the year 1899, Mr. Faust? A. Yes, sir.

Q. Well, now, had you at any time prior to the year 1899, ever loaned any money to any people with which to make final proof on land? A. Yes, sir.

Q. Well, now, had you at any time prior to the year 1899, ever loaned any money to any people with which to make final proof on land? A. Yes, sir.

Q. During what period had you done that?

A. Well, there were several years prior to that; I don't now recall the date that we loaned money to Mabel C. Jakways for making final proof on a timber claim.

Q. Do you remember of ever loaning any people money with which to commute on homesteads?

By Mr. MAYNARD.—I object to the question upon the ground that it is irrelevant and immaterial.

A. I don't now remember.

Cross-examination.

(By Mr. MAYNARD.)

Q. You say that you are thirty-five years old and have been at business at Ovando for the last nine years.

(Testimony of H. J. Faust.)

A. Yes, sir, a little over nine years.

Q. Has your partnership with Mr. Jakways continued during that length of time? A. Yes, sir.

Q. Where were you living and what were you doing just before you moved to Ovando?

A. Immediately prior to going to Ovando I was visiting my folks in Minnesota.

Q. What had you been doing just before that?

A. I had been a check clerk and a relief agent for the Northern Pacific Railroad Company at Drummond, Montana.

Q. How long were you engaged in that business?

A. I was check clerk, I think, about a year and a half, and relief agent, I think, for about two months.

Q. Did you have any property of any kind at that time, either real or personal?

A. Well, I was interested in my folks' estate in Minnesota. I also had some personal property.

Q. What was your interest in your father's estate?

A. One-third interest in two-thirds of the estate.

Q. What did the estate consist of?

A. A farm and some dwelling-houses, and so forth, in Minnesota.

Q. Did you reduce your interest to possession, and get the money on your interest?

A. No, sir, not at that time.

Q. When did you?

A. Well, the estate was sold, I think, in 1898 or

(Testimony of H. J. Faust.)

1899; I don't now remember exactly, and then it was divided up among the heirs.

Q. And you got your share? A. Yes, sir.

Q. How much did it amount to?

A. I think about fifteen hundred dollars; I don't exactly remember.

Q. Did you receive whatever amount—the figures that you did receive, in cash? A. Yes, sir.

Q. In 1898 or 1899?

A. Either of those two years; I don't recollect exactly.

Q. And you now cannot tell me how much you did receive?

A. I think I can pretty near; between November 7th and the 29th, in 1898, there is a credit to my personal account of $1,427.33, and I am inclined to think that that includes that amount—that in that amount is included whatever I received from that estate as my portion.

Q. Well, have you now no independent recollection as to the amount that you received from the estate that entered into that entry there? A. No, not now.

Q. What did you say?

A. No, not now I have not.

Q. You cannot say as late as 1898 the exact amount that you received from the estate?

A. No, sir, I could not; I couldn't say now the exact amount.

(Testimony of H. J. Faust.)

Q. Well, then, within three or four hundred dollars?

A. Well, I have said that as near as I can.

Q. Well, will you say it was more than a thousand?

A. Yes, sir.

Q. More than twelve hundred dollars?

A. I couldn't say that it was more than twelve hundred dollars.

Q. That was some five years after you had been engaged in business up at Ovando? A. Yes, sir.

Q. What means did you have to start the business with?

By Mr. WALSH.—We object to that on the ground that it is not proper cross-examination.

A. Well, I had money of my own.

Q. How much was it?

By Mr. WALSH.—We object to that on the ground that it is not proper cross-examination.

A. I don't exactly remember; it was something over a thousand dollars at that time, at the time I started in business.

Q. Started in business at Ovando with something in the neighborhood of a thousand dollars?

A. That is what I invested at the first investment, yes, sir.

Q. Well, did you have any means of any kind other than the thousand dollars which you invested in the business?

(Testimony of H. J. Faust.)

By Mr. WALSH.—We object to that question on the ground it is not proper cross-examination.

A. I borrowed some money after I had been in business a few months.

Q. How much did you borrow?

By Mr. WALSH.—We object to that on the ground that it is not proper cross-examination.

A. I think five hundred dollars.

Q. When you say a few months, what do you mean by that?

A. Well, we started in business some time in November, 1892, and in the following spring I recollect of borrowing five hundred dollars to increase the stock that I held, the interest in the firm.

Q. From the time that you started in business with a thousand dollar investment and borrowed money, the five hundred dollars, can you remember of receiving any money from any source whatever between that time and 1898?

By Mr. WALSH.—We object to that on the ground that it is not proper cross-examination.

A. You mean outside of our business?

Q. Yes, sir.

A. We might have, I cannot say positively that we did. I cannot say positively whether we did or did not.

Q. You wish to be understood as saying that between the time that you started in business and 1892, you had received money from any source in any way,

(Testimony of H. J. Faust.)

materially increasing your possessions, that you cannot now remember?

A. Oh, there might have been small sums that I didn't pay much attention to.

Q. Well, can you remember any one sum, great or small, which you received in any way, of your personal capital during that time, and between those dates, outside of whatever you may have made in your business?

A. I couldn't name the exact sum, no, sir.

Q. Now, you have a book in your possession; what book is that, Mr. Faust?

A. That is our ledger.

Q. When was that book first used in your business?

A. This particular ledger was opened January 1st, 1897.

Q. Is it the one that you are now using?

A. No, sir.

Q. When did you stop using it?

A. December 31st, 1900.

Q. Why did you stop using it at that time?

A. Well, the spaces were getting filled, and we thought it best to open a new ledger.

Q. In this ledger of 476 pages, I notice that there are no entries whatever of any kind between pages 275 and 355, inclusive. How are you able to say that the book was filled up, with nearly a hundred pages consecutively that are not used at all?

By Mr. BICKFORD.—Now, we object to this question

(Testimony of H. J. Faust.)

for the reason that it is not proper cross-examination, and it is decidedly an impertinent question.

A. Well, they were short space accounts and we didn't care to use them.

Q. The only difference between the spacing on these pages and some other pages in the book, is the fact that these spaces have four accounts rather than two, is it not?

A. I would not use space for two rather than one to the page.

Q. I call your attention to page—for example, 258, and 259. Are there not four accounts there on those, two of them?

A. On the two pages, yes, sir, but not on one page.

Q. Well, I refer to the two pages.

A. Well, there are four accounts on the two pages, yes, sir.

Q. Well, now, aren't all of those pages that I called your attention to, a hundred consecutive pages, arranged for your four entries? A. Yes, certainly.

Q. Well, why did you not use the hundred pages instead of getting a new book?

By Mr. WALSH.—We object to the question upon the ground that it is not proper cross-examination, and further that the question has already been answered by the witness.

A. I have answered that question, short spaced accounts.

Q. From pages 237 to 274, inclusive, I will ask you

(Testimony of H. J. Faust.)

if they are not all short paged accounts, and all used by you in the course of your business?

A. Yes, sir.

Q. What is the difference between the pages 237 to 274, inclusive and those from 275 to 355, inclusive?

A. The spacing, you mean.

Q. Yes, sir.

A. There is no difference whatever.

Q. If the spacing is the same, and you could use the pages from 237 to 274, why could you not use pages 275 to 355?

A. Because in using them we would have to use accounts that would take up the whole page, and that spacing in the center would make it disagreeable to use it.

Q. What do you mean by that? Do you mean that all of these blank pages, of nearly a hundred, would necessarily have to be used for full paged accounts?

A. No, I don't mean that.

Q. Well, what do you mean?

A. Why, in order to use them we would have to usually make transfers when we got down to the ruling of the center spacing, for a large account.

Q. But you could have used them for all your accounts?

A. Yes, sir, if we had had short accounts, enough to fill the spaces.

Q. I will ask you to point out a single page of the 476 pages of this ledger where one page was wholly

(Testimony of H. J. Faust.)

taken up with any account that you had with any person outside of your own firm.

A. There is the account of F. Manning, account of Nels Opsata, and account of G. L. Hammond; that takes up more than one page.

Q. That is three of them, now name some more.

A. That is three, yes, sir.

Q. Well, I want you to point out some more.

A. How many?

Q. All that you can find.

By Mr. WALSH.—We object to that for the reason that it is utterly irrelevant and immaterial, and is not cross-examination, and a mere consumption of time without any good result therefrom.

By Mr. MAYNARD.—To yourselves.

By Mr. WALSH.—To anybody.

Q. Go on , Mr. Faust. A. Here is another.

Q. Yes, that is four. A. Alfred Stewart.

Q. Yes, sir, that is five.

A. F. M. Lynn, Robert Dixon, R. F. Mclean, William Dilts, and L. S. Jakways.

Q. Well, he is your partner, L. S. Jakways?

A. No, sir, he is not.

Q. Your clerk in your office, is he not?

A. Yes, sir. Shoup & Howard, and Mrs. H. J. Faust.

Q. Where is that?

A. Here. A. R. Babcock. I guess that is all the long accounts.

(Testimony of H. J. Faust.)

Q. Well, now then, you have named less than ten, I think, and one of them is your brother's, your partner's wife? A. No, sir.

Q. Well, who is she? A. She is my wife.

Q. Well, your wife. Your wife, and the other is Jakways, the young man that works in your store.

A. Yes, sir.

Q. And that is ten pages out of 476. I notice further in this ledger on the long pages unruled, where provision is made for long acounts, there are no entries whatever between pages 129 and 236, inclusive, being 135 pages unused. Why did you not use these pages?

A. Because we took up a new ledger, as I said in the beginning.

Q. And your answer was that you took up a new ledger because the old one was fi''ed.

A. Or getting full, and we didn't care to use it; that was my answer.

Q. And there was—you wanted provision for long accounts and here is 135 pages right along in the book that are not used at all, you can see that these pages are not used? A. Yes, sir, I do.

Q. I next call your attention to the fact that there are no entries whatever on pages 431 to 476, inclusive. You can see that, can you not? A. Yes, sir.

Q. Now, then, in the light of this examination, do you still desire to say that you abandoned the use of this ledger and took up a new one for the reasons that you have stated? A. Yes, sir.

(Testimony of H. J. Faust.)

Q. What other books have you in your possession?

A. Well, we keep a cash book and a journal.

Q. Do you use any other books in the conduct of your business, other than a cash book and a journal and a ledger?

A. We have an invoice book.

Q. Have you here in your possession those books?

A. No, sir.

Q. Were you informed by your counsel that a demand had been made by the Government upon them that you produce these books?

A. Not until I came here.

Q. After you were informed by them, did you make any efforts whatever to secure them? A. I did.

Q. What efforts?

A. I wrote to our Mr. L. S. Jakways to hunt them up and send them to me.

Q. Have you received them?

A. No, sir, I have not.

Q. Have you received any word whatever from him in regard to them? A. Yes, sir.

Q. What did he say?

A. He said that they could not be found.

By Mr. WALSH.—Did he write you?

By the WITNESS.—Yes, sir.

By Mr. WALSH.—Have you got the letter with you?

By the WITNESS.—Yes, sir.

(Testimony of H. J. Faust.)

By Mr. WALSH.—Well, we object to that unless he produces the letter.

By Mr. BICKFORD.—If it contains any matters which relate to any other matters than those referred to, you need not show it to him, you can leave that portion of it out.

By Mr. WALSH.—I think it doesn't, does it Mr. Faust?

By the WITNESS.—No, I believe not.

Q. I will ask the witness to read the letter.

A. "Ovando, Montana, April 22, 1902.

H. J. F.

I send you by mail this morning the vouchers and cash slips covering the period mentioned in your letter, but I am unable to find the cash book and journal anywhere about the place. Your wife and I have searched both store and house, and all the warehouses, and are unable to find them. Mrs. Faust is under the impression that you took these books to Helena when you were over there, and doesn't know where you put them when you came back. If you can think where you put them, and will tell us, we will send them, but have looked high and low and they are positively not in the files.

Yours,

L. S. JAKWAYS."

Q. Did you receive that letter by due course of mail?

A. Yes, sir, I did.

Q. What recollection have you of taking any of those books that they refer to, to Helena?

(Testimony of H. J. Faust.)

A. None whatever.

Q. You are positive that you did not? A. I am.

Q. You keep those books, do you not?

A. I do.

Q. I mean you are the head bookkeeper?

A. I do most of the entering, although Mr. L. S. Jakways did some of the entry work.

Q. That is L. S. Jakways, your clerk?

A. Yes, sir.

Q. You mean by that that what you call this journal, this journal is what is sometimes called a blotter.

A. No, sir.

Q. Did you keep a blotter?

A. Not in the shape of a blotter, no; we have individual books for each person, and a small ledgerette for blotter purposes.

Q. That is, you make the charge in the individual book of your customer? A. Yes, sir.

Q. And make no charge of that sale?

A. Oh, yes, we do.

Q. What did you put that in?

A. It depends upon the nature of the sale.

Q. Well, describe that please?

A. Well, that is a cash sale of goods on the cash slips, entered in the cash-book—if it is a cash sale, it goes onto the cash slips and into the cash-book and entry journal—or, I mean, into the ledger.

Q. And if it charged, then what?

A. Charged how?

(Testimony of H. J. Faust.)

Q. If it is a credit sale, then what?

A. It would be the same thing.

Q. What did you say?

A. It would be the same thing. If it is a cash transaction, a credit as well as a debit.

Q. No, no. I wasn't referring to cash sales; I was referring to sales on credit. Where did you make the account?

A. You mean merchandise sales, then, do you not?

Q. Of course I do. I mean goods that you sell out of the store on credit.

A. We have a memorandum-book for each party, as I have already stated, and also a small ledgerette.

Q. Well, now, in the course of your business, before the entry in the ledgerette, the same entry is made in the individual book of the customer.

A. If the accounts happen to be on the ledgerette, yes, sir.

Q. Well, you always make an account independent of the account you put in the book of the customer, do you not?

A. I don't understand that.

Q. Let me explain, now. Suppose you sell Mr. Doney ten pounds of sugar. He has a book of his own, hasn't he? A. Yes, sir.

Q. And you make that entry in his book?

A. Yes, sir.

Q. And he goes off with it? A. No, sir.

Q. Oh, you retain the book? A. Yes, sir.

(Testimony of H. J. Faust.)

Q. Very well; then this is the original entry which you keep with the customer, but retain it in your possession? A. Yes, sir.

Q. And so those entries are transcribed into another book? A. Only by totals.

Q. Only by what? A. Only by totals.

Q. I don't hear what you say.

A. Only by totals, I said.

Q. Totals? A. Yes, sir.

Q. Well, now, you mean by that if there were five items, sugar, coffee, tea, and so on, and which amounted to five dollars, you would charge five dollars to Doney in some other book. Is that what you mean?

A. Well, on that plan, although it doesn't exist at certain periods.

Q. Mr. Faust, you say that you have charge of the bookkeeping share of your business—the bookkeeping part of your business?

A. I do most of it; yes, sir.

Q. Now, are you unable to intelligently inform me of how you conduct your business in regard to your books of account? A. I am not unable, no, sir.

Q. Well, then, why don't you do so?

A. I have told you to the best of my knowledge. I have answered your questions.

Q. Well, then, I wish you would take the instance that I have cited, where we will say Mr. Doney buys five articles on credit, and take it as a case where sales are made by your firm on credit to persons who have a continuing

(Testimony of H. J. Faust.)

account in the nature of this small book that you have testified to, now what else do you do with it?

A. The account is kept in that small book, and duplicate entries are made from time to time, and the debit or credit carried forward until the end of the year, when we take an inventory.

Q. Very well. In what book is this duplicate account entered? A. Entered into the ledger.

Q. Into the ledger? A. Yes, sir.

Q. You mean all the items that enter into the small book or pass-book are entered into the ledger?

A. No, sir, only the totals.

Q. Well, what did you mean, then, when you said that you entered a duplicate account?

A. I meant by that that our book is a duplicating book. The customer receives the original bill and we retain the copy, the carbon copy.

Q. Of the account?

A. Of the account, yes, sir.

Q. In what book is that entered?

A. It isn't entered at all.

Q. This carbon account?

A. It isn't entered at all.

Q. What do you call that book?

A. Well, I don't know what you would call it; it is a customer's account book, I presume.

Q. Something like a letter-press book?

A. No, sir.

Q. Well, what is it?

(Testimony of H. J. Faust.)

A. It is a carbon copy-book.

Q. For each customer?

A. For each customer, unless the accounts are small and short, and then we sometimes carry it on the ledgerette.

Q. Have you got one of those carbon books here?

A. No, sir, I have not.

Q. You make the impression in your carbon books the same as letters are made, and copy-books—in copy books?

A. That depends upon what kind of a copying book it is. This is an ordinary carbon copying book. That is all I can explain to you.

Q. Did you ever see any such bookkeeping anywhere else? A. I cannot say that I have.

Q. Is this an original device of your own?

A. It was at the time, but I think it has been adopted by others now.

Q. Have you got it patented? A. No, sir.

Q. Did you ever apply for a patent?

A. I negotiated, but I never fulfilled.

Q. What do you mean by "negotiated"?

A. Negotiated for a patent, but never carried it out, so as to receive a patent for it.

Q. Can you name three persons that you know of that have adopted this system? I kept books for five years, but it is entirely unintelligible. Can you name five persons? A. No, sir.

Q. Can you name one?

A. No, sir. Yes, sir, I take that back. It was adopted

(Testimony of H. J. Faust.)

by L. J. Baker & Co., of Anaconda, once, but whether they have it now or not, I don't know.

Q. How do you know they adopted it?

A. Their salesman told me so, that they had it there.

Q. And that is all you know, what the salesman told you? A. That is all, yes, sir.

Q. Now, when did you first get acquainted with Mr. Cobban? A. Which Mr. Cobban?

Q. I didn't know that there was more than one.

A. Yes, sir. I get acquainted with Mr. W. F. Cobban several years ago.

Q. Who is he?

A. A gentlemena here in Butte.

Q. What relation is he to R. M. Cobban?

A. I think they are brothers.

Q. Did you ever have any business relations with this brother? A. Well, on a small scale.

Q. What do you mean by that?

A. Well, dealing with us as he would, or as we would, with any of our customers.

Q. Did he live near Ovando?

A. He was there camping out and enjoyed himself on one or two occasions.

Q. Did you ever have any dealings with him other than that which you had when he bought some supplies for his camp?

A. Well, no completed negotiations, no, sir.

Q. Did you ever have any other acquaintance with

(Testimony of H. J. Faust.)

him other than that which you made when he occasionally called into your store while he was camping out?

A. Well, no, not up to that time; no, sir.

Q. Well, did you afterwards?

A. Yes, sir, we corresponded on several business propositions afterwards; yes, sir.

Q. And was that before you had had any acquaintance with R. M. Cobban? A. Yes, sir.

Q. When did you first form the acquaintance of Mr. R. M. Cobban?

A. Well, that was in 1899, I believe; I don't remember the exact date, but I think it was in the month of June.

Q. Where was he then?

A. He was at Ovando, Montana.

Q. At your store? A. Yes, sir.

Q. You were introduced to him, were you not, by your partner, Mr. Jakways? A. I believe so.

Q. Mr. Griswold, Mr. Chauncey L. Griswold, was present at the time, was he not?

A. I don't remember that he was, although he might have been.

Q. Well, you know Mr. Griswold very well, don't you?

A. I know him; yes, sir.

Q. You had known him, then, before this introduction was given to you by your partner, Mr. Jakways?

A. Yes, sir.

Q. Well, you and Cobban and your partner, Jakways, were in the store at the time you were introduced by your

(Testimony of H. J. Faust.)

partner, the first time you ever saw Mr. Cobban, and you say that Mr. Griswold might have been there?

A. He might have been there, yes, sir; I don't know that he was, and I don't know that he was not.

Q. Do you remember that your partner, Mr. Jakways, at that time and place, informed you of the meeting that he had had, and the conversation that he had had with Cobban, immediately prior to this introduction, or thereabouts?

A. No, sir, I don't remember of him informing me of any such meeting or conversation.

Q. You know that he had that day, or the day before, been at Jakways' ranch—your ranch that you hold in common with Jakways, did you not?

A. I don't know that I do; no, sir.

Q. You have no recollection on that subject?

A. No, sir, I have no recollection on the subject.

Q. You have no recollection of any conversation that was had there in the store at the time you were introduced to Mr. Cobban?

A. No, nothing, only in a passing conversation.

Q. Wasn't Mr. Cobban's purpose in being up in the woods, disclosed to you at that time?

A. Why, I couldn't say that it was, but it seems to me that I understood that through some source, that Mr. Cobban was interested in buying timber lands and timber.

Q. You don't know the source from which you obtained that information? A. No, I couldn't tell that.

(Testimony of H. J. Faust.)

Q. But the fact you do remember?

A. Yes, only I was informed at that time.

Q. Now, wasn't you also informed of the fact that Mr. Griswold was connected with him in the transaction?

A. No, sir, not that I now remember of.

Q. When did you first learn that fact?

A. Why that was some time afterwards, I think in the month of July of that same year.

Q. Where were you, and from whom did you ascertain that fact?

A. I don't know where I was, but I think my partner told me, Mr. C. A. Jakways.

Q. Do you remember any of the incidents connected with that conversation, in which your partner told him of Griswold's connection with Cobban?

A. No, I do not now.

Q. You remember of having seen Cobban between the time that you were so informed and of your being introduced to him? A. Yes, sir, I think I do.

Q. How many times?

A. I couldn't say; once, anyway.

Q. What was the occasion of that one time that you distinctly recall?

A. The first visit that he made up there, that is the only recollection I have.

Q. You mean the time you were introduced to him?

A. Yes, sir.

Q. I didn't ask for that. What I did ask you was as to whether or not you remember of having seen Cobban

(Testimony of H. J. Faust.)

between the dates that you were introduced to him and the date that you were informed by your partner that Griswold was associated with Mr. Cobban in the work then in hand, namely, of purchasing the timber.

A. No, I don't remember that; I don't remember that I did see him.

Q. Did you see him frequently after that?

A. No, I saw him very seldom.

Q. How many times, in your judgment, did you see him after the day that you were introduced to him, during that Summer and Fall at Ovando?

A. Well, I don't know exactly; might have been two or three times.

Q. How many times did you see him at Missoula?

A. None at all.

Q. None at all? A. None at all; no, sir.

Q. How many times in Helena? A. Not at all.

A. At no one of the times that you came over here with entrymen as a witness, at the time of their making final proof, you didn't see Mr. Cobban?

A. I didn't see Mr. Cobban; no, sir.

Q. You did, as a matter of fact, go to Helena as a witness in the cases of entrymen making their final proof, did you not? A. Only once.

Q. In what case was that?

A. Edward D. Doney and Martha M. J. Doney.

Q. Were there any others at the same time that made entries? A. Not to my knowledge.

(Testimony of H. J. Faust.)

Q. You have no knowledge of other men and women coming to Helena at that time? A. No, sir.

Q. And you only had charge of the Doney entries?

A. I went as a witness; yes, sir.

Q. And you paid the money yourself into the land office?

By Mr. BICKFORD.—The witness has not so testified.

By Mr. MAYNARD.—Well, the Doneys have.

(By Mr. BICKFORD.)

Q. Well, but that is not the witness now upon the stand. That is a different proposition.

Q. You paid money into the land office yourself, did you not, to pay for the land that Edward D. Doney and Martha M. J. Doney, his wife, proved up on that day, did you not? A. I don't remember that I did.

Q. Are you prepared to say that you did not?

A. My recollection—the best of my recollection is that I did not.

Q. How did you happen to come?

A. At their request, as a witness.

(Recess taken until two o'clock P. M. same day.)

Thursday, May 1st, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

HENRY J. FAUST, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Faust, you said in reply to your counsel that

(Testimony of H. J. Faust.)

you had made an arrangement with Mr. Cobban for the purchase of land for him.

A. We were instructed to purchase if we found any tracts.

Q. When did you receive such instructions?

A. As near as I can remember, the first time that I saw Mr. Cobban, or it was talked of at any rate.

Q. What was the business that Mr. Cobban was engaged in as you were informed at the time that you now say that he spoke to you, namely, when you first saw him at your store, what did he say to you?

A. Why, nothing further than that he was in the market to buy timber lands and timber on lands.

Q. Who was he buying them for?

A. For himself, I presume; he did not say.

Q. And how was he buying them? What was the plan of operation that he spoke about at that time?

A. Nothing more than if there was timber in the market that we knew of, he would be glad to buy it if he could buy it at his figures.

Q. What were his figures?

A. Well, I think he based his figures on the estimate of the amount of timber that there was on the land.

Q. Well, was the price per thousand named?

A. Well, I think he expected to buy at about so much per thousand.

Q. How much?

A. Something like one dollar a thousand, I think, he figured on.

(Testimony of H. J. Faust.)

Q. Under what acts of Congress were these lands to be taken up?

A. I do not know what you mean by that. What lands?

Q. That Cobban was to buy.

A. Why, not necessarily to be taken up under any act; most, or a good many of them, were held at that time by parties in there.

Q. You mean what is known out here as titled land?

A. Yes, they had title to it.

Q. What do you mean by a good many?

A. Well, there were several parties that had homesteads that had timber on them and they could convey at any time they found a purchaser.

Q. He gave you to understand that he wanted to buy timber, did he not? A. Yes.

Q. And that he would like to have you put him on to persons who had timber to sell? A. Yes, sir.

Q. And did you do that?

A. Why I think so.

Q. How did you do that?

A. Why, I told him of such parties as I knew and I thought had timber for sale at that time.

Q. Did you communicate with him in writing?

A. No, not at that time; it was simply a personal interview.

Q. Are you referring now to the first interview that you had with him? A. Yes, sir.

(Testimony of H. J. Faust.)

Q. How many persons did you name then as persons that had timber to sell?

A. I do not now remember.

Q. Were there quite a number?

A. No, I don't think there was very many at that time.

Q. Can you remember one? A. Yes.

Q. Who was it?

A. Gottlieb Bruner was one of them.

Q. Can you name another?

A. Alfred Stewart had timber on his homestead.

Q. Did you tell him at that time?

A. I think I did.

Q. What fact is there that enables you to recall any other fact which makes you now think that at that very first conversation that you had with Mr. Cobban you mentioned Stewart's claim?

A. Nothing particular any more than I would naturally tell him of such parties as I thought would care to dispose of their timber.

Q. Well, after he had this conversation with you when he told you that he would like to have your firm assist him, what did you do; what was the first thing that you did?

A. Well, I don't remember; I presume that I conversed with parties that had timber for sale, informing them of the fact that Mr. Cobban was buying timber.

Q. Did you leave the store at any time and go out into the country to give this information?

(Testimony of H. J. Faust.)

A. Not that I recollect now. I generally saw these parties as they came and went to the store.

Q. What did you say to them when you were talking with them on the subject; what was the substance of the information that you gave them?

Mr. BICKFORD.—Objected to as not proper cross-examination and as hearsay.

A. Well, I presume simply that Mr. Cobban was in the market to buy timber; if they cared to dispose of their holdings they could probably do so.

Q. How about those that at the time had no holdings?

A. Well, nothing was said; that came up afterwards.

Q. How long afterwards, Mr. Faust?

A. Well, I don't remember. I presume after they had made their final proof.

Q. Oh, no, I am not talking about that. I was asking you now in regard to persons that you talked to that did not have timber to sell, but who could have timber to sell by making an entry, say, under the Stone and Timber Act.

Mr. WALSH.—He answered that question and said there was nothing said about it.

A. Why, no, I had no conversation with parties to that effect; I had no conversation with entrymen that afterwards did take up claims under the Stone and Timber Act, because they did that voluntarily without my say so.